

Guide of the Implementation
of
The Hard-Rock Mining Impact Act
and
The Property Tax-Base Sharing Act

Title 90, Chapter 6, Parts 3 and 4
Montana Code Annotated

The Hard-Rock Mining Impact Board

Revised May 2008

**GUIDE TO THE IMPLEMENTATION OF
THE HARD-ROCK MINING IMPACT ACT AND
THE PROPERTY TAX-BASE SHARING ACT**

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PREFACE

The Hard-Rock Mining Impact Board has prepared this *Guide to the Implementation of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act* to assist persons affected by the Hard-Rock Mining Impact Act (1981) and Hard-Rock Mining Property Tax Base Sharing Act (1983). The two Acts are found in Title 90, Chapter 6, Parts 3 and 4, *Montana Code Annotated*. The statutes and the *Guide* are the result of many years of experience, discussion and effort by interested legislators, local government personnel, mineral developers, the Montana Environmental Quality Council, the Montana Mining Association, the Northern Plains Resource Council, the Montana Association of Planners, the Hard-Rock Mining Impact Board, interested consultants and citizens, and the Montana Departments of Commerce, Environmental Quality and Revenue. This revision of the *Guide* reflects amendments enacted by the Montana Legislature and policies and procedures adopted by the Board through 2005.

The Hard-Rock Mining Impact Board is a five-member, quasi-judicial board appointed by the Governor. The Board is attached to the Montana Department of Commerce for administrative purposes only. As required by statute, the Board includes an elected county commissioner, an elected school district trustee, and representatives of a major financial institution, the mining industry, and the public-at-large. At least three members must reside in current or potential impact areas. At least one member must reside in each of the four multi-county districts provided for in section 5-1-102, MCA.

- The Board administers the Hard-Rock Mining Impact Act
- adjudicates disputes about the local government impact plans required for new large-scale mines
- rules on impact plan waivers or conditional waivers for certain permittees
- determines whether a mineral developer is complying with the requirements of the impact and tax base sharing statutes and with the approved impact plan and notifies the Department of Environmental Quality (DEQ) as necessary; determines when a jurisdictional revenue disparity among affected local government units exists, as identified in an approved plan, or ceases to exist, and notifies the Department of Revenue to initiate or terminate tax base sharing; and makes such other determinations as may be necessary for the performance of its duties and the implementation of the Impact Act.

Effective in 1990, the Legislature transferred to counties and school districts both the funding and authority to mitigate the fiscal and economic impacts that result from a hard-rock mine closure or a reduction in workforce of more than 50 percent. This mine-closure, workforce-reduction program applies only to counties with mines that have paid metal mines license taxes since 1985. This program is a part of the State's overall impact assistance legislation for local government units affected by hard-rock mining

and may affect the impact plan. The *Guide* contains a brief discussion of the statutes that allocate metal mines license tax revenue to counties and prescribe its distribution and use by local government units. This allocation of metal mines license tax revenue to counties and its subsequent distribution and use by local government units is, however, not an administrative or quasi-judicial responsibility of the Board.

Meetings of the Hard-Rock Mining Impact Board are open to the public. Agendas are mailed upon request about two weeks before each meeting.

Please contact the Board if you have questions or concerns about the revised *Guide*, the Hard-Rock Mining Impact Act, or the Property Tax Base Sharing Act.

Hard-Rock Mining Impact Board
Montana Department of Commerce
301 South Park Avenue
PO BOX 200523
Helena, MT 59620-0523
(406) 841-2782 or 841-2789
FAX – (406) 841-2771

Joe LaForest
Administrative Officer

Kelly Casillas
Attorney

INTRODUCTION

The **Guide to the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act** (Guide) is designed to help mineral developers, local government officials and staff, and others affected by the social, economic and local government impacts of large-scale hard-rock mines.

The Hard-Rock Mining Impact Board administers the Impact Act and adjudicates certain disputes that may arise under the Act. (In the Guide, the Hard-Rock Mining Impact Board will be referred to as simply “the Board”.) In clarifying the Board's responsibilities, the Legislature has instructed the Board that it:

Must ensure that implementation of the act is consistent with the purpose of mitigating local government impacts that may result from the commencement of large-scale hard-rock mineral developments in the state. [*Statement of Intent, HB 472, 1983*]

Under the Impact Act, the developer of each proposed new large-scale hard-rock mine in Montana is required to prepare an impact plan that identifies the local government services and facilities that will be needed as a result of the mineral development. In the impact plan, the developer must identify and commit to pay all increased local government capital and net operating costs that will result from the development. Payment may be through grants or contributions, property tax prepayments, facility impact bonds, or other financing mechanisms. The developer may also provide non-financial assistance to the affected local government units.

Affected local government units assist with the preparation of the impact plan and, along with the developer, share the legal responsibility for ensuring that the plan contains all required information, projections, and commitments. Affected local government units may include counties, incorporated cities and towns, school districts, and the following independent special purpose districts: rural fire, public hospital, refuse disposal (solid waste), county water and/or sewer, and county park districts. When the proposed plan is complete, the developer submits it to the Hard-Rock Mining Impact Board and the affected local government units for formal review by the latter. During the 90-day review period, the county must hold a public hearing on the proposed plan. If an affected local government unit disagrees with any part of the plan, its governing body may file an objection with the Board. If the mineral developer and local government unit cannot resolve the objection through negotiation, the Board holds a contested case hearing, adjudicates the dispute, and amends the plan as needed.

If the increased costs identified by the plan will occur in taxing jurisdictions in which the mine is *not* located, or in which an insufficient portion of the mine's valuation is located, the impact plan may trigger property tax base sharing. Property tax base sharing apportions the taxable valuation of the mineral development among counties and municipalities, high school districts, and elementary school districts affected by the new mineral development. Each recipient local government unit applies its own mill levy to its share of the mineral development valuation.

A mineral development is considered "large-scale" if in the construction or operation of the mine and associated milling facility, the developer, and its contractors and sub-contractors at the site will employ more than 75 persons during any consecutive six-month period. New mineral developments that become "large-scale" after receiving their operating permits may apply to the Board for a waiver or conditional waiver to the impact plan requirement. As a condition of the statutes under which the operating permit is issued by the Montana Department of Environmental Quality (DEQ), the large-scale mineral developer must comply with the requirements of the Impact Act and the Tax Base Sharing Act and with its commitments in an approved impact plan or in a conditional waiver.

The statutory requirements for hard-rock mining impact plans, impact plan waivers and property tax base sharing are found in the *Hard-Rock Mining Impact Act and the companion Property Tax Base Sharing Act, Parts 3 and 4 of Title 90, Chapter 6 of the Montana Code Annotated (MCA)*. *Regulatory requirements are contained in the Administrative Rules of Montana (ARM), beginning with Section 8.104.101.*

Under a separate funding program, the State allocates 25 percent of its annual metal mines license tax collections to the counties in which the taxpaying mines are located or, in certain circumstances, to the counties that, according to an impact plan, will experience increased costs or increased employment as a result of the mine. [15-37-117(1)(e), MCA] The monies are to be used, primarily, to enhance community planning efforts and help communities diversify and strengthen their local economies while the mine is in operation and to mitigate the fiscal and economic effects of mine closures and major reductions in workforce. The Guide contains a brief discussion of the statutes governing this allocation of revenue, because it is part of the State's overall hard-rock mining impact mitigation legislation. However, the allocation of metal mines license tax revenue to counties and its distribution and use by local government units is not an administrative or quasi-judicial responsibility of the Board.

In some cases, the advent of a new hard-rock mine may result in little or no increased cost for local government units. In other cases, the increase in service and facility needs and costs may be substantial. In either situation, the construction and operation of the mine

will bring increased employment to the impact area and, eventually, increased tax base and tax revenue to the affected local government units. The impact plan addresses those increased local government costs resulting from the mineral development that precede or exceed the increase in tax base or that would otherwise burden local residents and taxpayers.

Questions about the Hard-Rock Mining Impact Act and Property Tax Base Sharing Act may be addressed to the administrative staff of the Hard-Rock Mining Impact Board:

**Hard-Rock Mining Impact Board
Montana Department of Commerce
301 South Park Avenue
P. O. Box 200523
Helena, Montana 59620-0523
(406) 841-2782**

**Ellen Hanpa, Administrative Officer
406-841-2789**

CHAPTER I

PROCEDURES FOR THE PREPARATION, REVIEW AND IMPLEMENTATION OF AN IMPACT PLAN AND FOR APPLYING FOR AN IMPACT PLAN WAIVER

Chapter I outlines the basic procedural requirements for preparing, reviewing and implementing a hard-rock mining impact plan and for applying for an impact plan waiver. The purpose of the outline is to help the reader "walk through" the procedures required by the Impact Act and the Tax Base Sharing Act.

Reviewing the Chapter 1 outline can not replace a careful reading of statutes, rules and the remainder of the Guide. Subsequent chapters discuss the purpose, substance and function of impact plans and plan waivers in the context of the Impact and Tax Base Sharing Acts and the mine permitting process. The appendices address specific issues and procedures in greater detail.

Procedural requirements are listed in roughly chronological order, specifying what action is to be taken and by whom. Some procedures are uniformly applicable to every impact plan process, while others depend on circumstances or on specific features of a plan. Brief discussions of substantive matters are included, as necessary, to clarify the context in which procedures occur.

For the most part, this chapter does not address the internal procedures of the Board, the Board's interaction with the DEQ and the DOR, or the internal procedures of local governments, except as specified by the Impact and Tax Base Sharing Acts.

In each section, related portions of the Guide are identified in a general way. The Table of Contents and the Index provide additional, more specific cross-references.

1. BEFORE THE PLAN IS SUBMITTED/PREPARATION OF THE PLAN

- a. The DEQ determines that a potential applicant for a hard-rock mine operating permit is a "large-scale" mineral developer, as defined by 90-6-302(4), MCA. DEQ notifies the developer and the Hard-Rock Mining Impact Board.

Authority: 90-6-302, MCA; 82-4-335, MCA; 90-6-307, MCA.

- b. The developer informs the affected county (or counties) and the Board of its intention to submit an impact plan and of the approximate date of submission.

Authority: by request of the Board.

- c. The developer and the governing body of the most affected county identify and prepare a list of all potentially affected local government units, giving, if possible, the name and address of the appropriate contact person for each governmental unit. The developer provides a copy of the list to the Board.

The plan must identify as an “affected” local government unit each unit that is expected to experience an increased need to provide services and facilities as a result of the mineral development and each unit within which the mineral development is located. (A county that meets neither of the above criteria but experiences an increase in employment as a result of the mineral development may be an affected local government unit for purposes of section 15-37-117, MCA.)

Authority: 90-6-302, MCA; 90-6-402, MCA; 15-37-117, MCA; ARM 8.104.203; Board policy.

- d. The developer and affected local government units identify the statutory, regulatory and functional requirements for the format, content, review, approval and implementation of an impact plan.

The impact plan:

- projects the schedule of development;
- defines and identifies the number of persons expected to come into the impacted area as a result of the mineral development;
- projects the increased need for local government services and facilities;
- projects the increased local government capital, operating and net operating costs; and
- projects the increased local government revenues that will result from the development.

In the plan, the mineral developer:

- must commit to pay all increased capital and net operating costs resulting from the mineral development, as identified in the approved plan; and
- identifies the financial or other assistance it will provide to affected local government units, specifying the method and schedule of impact payments and whether the payments will be made directly to local governments (through the county treasurer) or through the Board.

For the most part, neither the Impact Act nor the Guide addresses local government procedures involved in the preparation and delivery of the services and facilities required by the plan, although these procedures, and the time they may require, need to be taken into account in formulating the plan and establishing the payment schedule.

If the plan requires the developer to prepay property taxes, it must also provide for the recipient local government units to credit prepaid taxes to the developer, within the requirements and limitations of *Sections 90-6-301, 90-6-307 and 90-6-309, MCA, and ARM 8.104.215.*

The plan may provide for its own amendment under definite conditions specified in the plan itself, in addition to the conditions set forth in *90-6-311, MCA.* The plan may also provide for its own monitoring and for adjustments within the limitations and criteria established by the Board.

Working with the local government units, the developer prepares the fiscal impact plan as required by the Hard-Rock Mining Impact Act, *the Tax Base Sharing Act, Section 15-37-117, MCA,* if applicable, and the Board's administrative rules.

Authority: Title 90, Chapter 6, Part 3, especially 90-6-307, 90-6-309, 90-6-310, and 90-6-311, MCA; and Title 90, Chapter 6, Part 4, especially 90-6-403(1), 90-6-404(5) and 90-6-405, MCA; section 15-37-117(1)(d), MCA; ARM 8.104.203 and 203A, 8.104.211, and 8.104.215; Board policies.

- e. The governing body of any affected local government unit may request financial or other assistance from the developer to prepare for and evaluate the impact plan. The governing body of the county enters into a contract with the developer for the requested financial assistance. The developer provides

the requested assistance. Such assistance constitutes a tax prepayment which the local government unit must credit against the developer's future tax liabilities, if any.

Authority: 90-6-307(3), MCA, and 90-6-309, MCA; ARM 8.104.203 and 8.104.215.

- f. The developer and affected local government units prepare a list that specifies the number of copies each local government unit will need for internal and public review of the proposed plan and, later, for implementation of the approved plan. The developer provides a copy of the list to the Board.

Authority: by request of the Board.

- g. The county and the developer decide how copies of the proposed plan will be distributed to the affected local government units so that, if possible, all affected local government units and the Board will receive the plan on the same day.

Authority: 90-6-307, MCA, and by request of the Board

The Board encourages the developer and local government units to review the completed draft plan informally before the developer submits the proposed plan for formal review. This informal review gives the parties to the plan an opportunity to clarify ambiguities, concur in minor changes, and, possibly, identify and resolve potentially major problems outside the constraints of the formal 90-day review period. By providing this additional opportunity for clarifying the plan and resolving potential problems, an informal review may forestall the necessity for filing objections and for subsequent adjudication by the Board.

2. WHEN THE PLAN IS FORMALLY SUBMITTED (by developer) AND RECEIVED (by the affected local government units and the Hard-Rock Mining Impact Board) FOR REVIEW (by the affected local government units and the public).

- a. Sometime after having applied for its operating permit from the DEQ, the developer submits 12 copies of the proposed plan to the Board and sufficient copies to the county and affected local government units to meet their review and implementation needs, as identified in the list provided to the Board. (See 1f. and 1. g above)

Authority: 90-6-307, MCA; 90-6-308, MCA; 82-4-335, MCA; ARM 8.104.204; Board policy.

- b. Each affected local government unit acknowledges its receipt of the plan in writing to the developer. The developer files proof of submission of the plan with the Board.

Authority: 90-6-307, MCA; ARM 8.104.204.

- c. Receipt of the proposed plan by all affected local government units and the Board initiates the formal 90-day review period. The review period begins the day after the latest day the plan is received and ends on the 90th day thereafter that is also a working day (i.e., not a weekend nor holiday).

Authority: 90-6-307, MCA; ARM 8.104.206.

- d. The governing body of each affected county publishes notice that it has received the plan and that the plan is available for public review. The notice is to appear in a large, readable format in a local newspaper of general circulation.

The county provides the Board with a copy of the published notice, attesting to its date of publication.

Authority: 90-6-307, MCA; ARM 8.104.205, Board Policy.

3. REVIEW AND APPROVAL OF THE PLAN (and, if necessary, extension of review period).

- a. Affected local government units and the public review the plan during the 90-day review period. They evaluate the plan for:
 - its completeness;
 - the accuracy, adequacy and appropriateness of its definitions, assumptions, data, projections, and impact mitigation provisions and commitments;
 - the specified methods, timing and amounts of impact payments;
 - the criteria and method for calculating tax credits;
 - the provisions for monitoring, adjusting and amending the plan; and
 - the projected effects of tax base sharing.

Reviewers try to ensure that the plan is workable, can be adapted to changing circumstances, and is consistent with the purposes and requirements of the Impact Act and, if applicable, the Tax Base Sharing Act.

Local governing bodies and the developer are responsible for ensuring that the plan complies with all statutory and regulatory requirements for the form and content of the impact plan.

Authority: Hard-Rock Mining Impact Act and Property Tax Base Sharing Act, especially 90-6-307, MCA; ARM 8.104.203.

- b. The governing body of any affected local government unit may request financial or other assistance from the developer to help it evaluate the proposed impact plan. When such a request is made, the county contracts with the developer, who provides the requested assistance. Such financial assistance constitutes a tax prepayment and must be credited against the developer's future tax liabilities, if any.

Authority: 90-6-307(3), MCA; ARM 8.104.203 and 8.104.215.

- c. During the 90-day review period, the county publishes notice and holds a public hearing on the proposed impact plan. The county provides a copy of the notice to the Board. The public participates in the impact plan review process through the public hearing and through meetings of the governing bodies of the affected local government units.

Authority: 90-6-307(4), MCA; by request of the Board.

- d. During the 90-day review period, if an affected local government unit disagrees with what the plan contains, proposes or omits, the governing body may notify the Board in writing of its objections to the plan. The governing body must specify the reasons for its objection, propose a solution for the disputed issue and provide other information required by statute and rule. The governing body files the signed, dated original and 15 copies of the objection with the Board and provides a copy to each other affected local government unit. Only the local governing body may file an objection on behalf of the local government unit and the residents and taxpayers within its jurisdiction.

Authority: 90-6-307, MCA; and ARM 8.104.207 and 8.104.208.

- e. An affected local governing body may petition the Board for one 30-day extension of the formal review period. Provided there is a reasonable basis for the request, the Board will grant the extension. The extension applies only to the local government unit or units that request it. During the 30-day extension, only the governing body of the requesting local government unit may file objections to the proposed plan. Other affected local government units are notified of and may respond to any objections filed during the extension.

Authority: 90-6-307, MCA; and ARM 8.104.208A.

- f. During the 90-day review period, the subsequent negotiation period (if any), or an extension of either. One or more affected local governing bodies and the mineral developer may, by mutual consent, modify the form or content of the submitted plan. The proposed modification must be submitted in writing to the Board and to all affected local government units identified in the plan. The original is filed with the Board and must bear the signatures of the designated representative of the developer and the governing body of each local government unit affected by the modification. If a modification affects only the form and not the substance of the plan, it may be signed by the developer and the governing body of the county, acting on behalf of all affected local government units within the county.

A substantive modification submitted after the 60th day of the review period must carry with it a request from the local governing bodies affected by the modification for an extension that will allow all affected local government units 30 days to review the proposed modification. If any affected local government unit opposes a proposed modification, the Board may refuse to accept it as a *modification* for lack of consensus. In that case, a local governing body that supports the modification may request the same change by filing an objection to the plan. Each modification and the complete plan as modified must comply with the statutory and regulatory requirements for the form and content of an impact plan.

Authority: 90-6-307, MCA; ARM 8.104.203 and 8.104.213.

- g. During the review period, the governing body of a local government unit that the plan does *not* identify as an *affected* local government unit may file an objection to the proposed plan, if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development. By statute, the *de facto* affected local government units are those that are expected to experience an increased need to provide services and facilities as a result of the mineral development and those within which the mineral development is located. The plan cannot exclude local government units in either group. (For purposes of section 15-37-117, MCA, a county that meets neither of the above criteria but that experiences an increase in employment as a result of the mineral development may also be an affected local government unit.)

Authority: 90-6-307 and 90-6-402, MCA.

- h. At the end of the 90-day review period or its 30-day extension, if no objections have been filed, or if all objections have been resolved by negotiation, the plan is approved.

Authority: 90-6-307, MCA.

- i. Within 10 days of the receipt of objections from an affected local government unit, the Board notifies the developer and forwards copies of the objections to it. The affected local government unit and the mineral developer try to negotiate an agreement on the disputed elements of the impact plan.

Authority: 90-6-307, MCA.

- j. At the end of the 90-day review period, or its 30-day extension, if any objections remain unresolved, a formal 30-day negotiation period begins.

Authority: 90-6-307, MCA.

- k. The mineral developer and an affected local governing body may jointly petition the Board to extend the negotiation period for the period of time specified in their request. The Board grants the extension as requested.

Authority: 90-6-307, MCA.

- I. By the end of the negotiation period, or its extension, the developer and the governing bodies of the local government units that filed objections notify the Board in writing of the outcome of their negotiations, identifying which issues have been resolved and which remain in contention.

Authority: 90-6-307, MCA; and ARM 8.104.209.

- m. The developer provides the Board with a copy of the mutually agreed upon amendments to the plan. The official copy of the amendments certifies that the signatories concur with the negotiated amendments and bears the signatures of the designated representative of the developer, the chairperson of the governing body of each local government unit that is a party to the amendment, and the chairperson of the governing body of the county.

Authority: 90-6-307, MCA; and ARM 8.104.209.

- n. If all objections are resolved during the negotiation period, the plan is automatically approved.

Authority: 90-6-307, MCA.

- o. If any objections remain unresolved, the Board holds a contested case hearing on the unresolved issues. Prior to the hearing, the parties to the dispute, or their legal representatives, meet with the Board's staff and legal counsel to clarify and narrow the disputed issues; establish procedures and schedules for exchanging briefs and evidence; clarify the procedures to be followed at the hearing; and stipulate to uncontested facts, matters of law and evidence to be submitted at the hearing. All parties to the dispute sign a pre-hearing memorandum prepared by the Board's legal counsel, outlining the procedures and stipulations applicable to the hearing. The Board publishes notice of the time, place, and subject matter of the hearing and holds the hearing in the most affected county.

Authority: 90-6-307, MCA; ARM 8.104.202; Montana Administrative Procedures Act; Board policy.

- p. Within 60 days after the closure of the hearing, the Board adopts its findings of fact and conclusions of law. Based on these determinations, the Board

issues its order, resolving the disputed issues. The Board serves its findings, conclusions and order on all parties to plan.

Authority: 90-6-307, MCA.

- q. The Board amends the plan, if necessary, to reflect its determinations and carry out its order.

Authority: 90-6-307, MCA.

- r. The Board approves the plan as amended or, if no amendments were necessary, as submitted. The Board notifies the developer and affected local government units when the plan has been approved and serves the parties to the plan with the amendments, if any.

Authority: 90-6-307, MCA; Board policy.

- s. An affected local government unit or the developer may request judicial review of the Board's decision in the judicial district in which the hearing was held.

Authority: 90-6-307, MCA.

- t. If an objection or judicial appeal is found to be valid and results in a remedial order, the Board or court must order and the developer must pay reasonable costs and attorney fees incurred by the local government unit in filing and defending its objection or appeal.

Authority: 90-6-307, MCA.

4. FOLLOWING APPROVAL OF THE IMPACT PLAN

- a. Within 30 days of receiving the approved plan or notice that the plan has been approved, the developer provides the Board and the DEQ with a written guarantee that it will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the schedule in the plan.

Authority: 82-4-335(5) and 90-6-307(9), MCA.

- . Upon receipt of the developer's written guarantee, the Board notifies the DEQ that the plan has been approved and the guarantee received.

Authority: 90-6-307, MCA; ARM 8.104.211; Board policy.

- c. If the plan requires the developer to prepay taxes, the developer must guarantee to the Board, through a third-party financial institution, that the required prepayments will be made as needed. The financial guarantee must be acceptable to the Board.

The developer submits the proposed financial guarantee to the Board for review and approval. The financial guarantee must be reviewed, approved and fully executed before activities under an operating permit issued by the DEQ commence, or prior to the time the affected local government unit incurs financial obligations in the implementation of the approved impact plan, whichever occurs first.

When the financial guarantee has been approved and executed, the Board notifies the DEQ that the developer has met the requirements of the Impact Act and that the approved plan is ready to be implemented. The developer is then in compliance with the requirements of 82-4-335(5), MCA.

Authority: 82-4-335(5) and 90-6-309(3), MCA; ARM 8.104.214.

- d. When the Board identifies a jurisdictional revenue disparity in an approved impact plan, the Board notifies the developer, the affected local government units, and the DOR. The developer, local government units and DOR implement the Tax Base Sharing Act as described in Appendix XIII.

Authority: 90-6-403, MCA.

5. IMPLEMENTATION OF AN APPROVED IMPACT PLAN: IMPACT FUND AND IMPACT PAYMENTS

Most of the procedures necessary to implement an impact plan will depend on the plan itself. The plan may impose significant expectations and requirements on the affected local government units that are to prepare for and provide the services and facilities

identified in the plan, as well as significant financial or other obligations on the developer. The plan may anticipate ongoing monitoring by both the developer and affected local government units and may require occasional adjustment or amendment. Before beginning to implement the plan, the affected local government units and the mineral developer may wish to review their respective responsibilities and the sequence and timing of actions necessary to the implementation of their impact plan.

Neither the Impact Act nor the Guide focuses on local government procedures involved in the preparation and delivery of the services and facilities required by the plan. However, the developer and local government units should have taken these procedures and the time they may require into account in formulating the plan and its payment schedule. With respect to implementing a plan, the Guide focuses on the budgeting, payment and tax crediting requirements of the Act. These requirements are summarized here and are discussed more thoroughly in Appendices XI and XII. (Implementation of tax base sharing is discussed in section 6 below and in Chapter II, Chapter IV and Appendix XIII.)

- a. The governing body of each local government unit entitled to receive impact payments under the approved plan:
 - Establishes an impact fund; and
 - Budgets, or amends its budget, to provide for the receipt and expenditure of impact monies through the impact fund.

Authority: 90-6-307 and 90-6-323, MCA; ARM 8.104.211.

- b. If impact payments are to be transmitted through the Board, the governing body provides the Board with a copy of the impact fund portion of its budget (or budget amendment) and the resolution by which the impact fund budget was adopted.

Authority: 90-6-307, MCA; ARM 8.104.211B.

- c. After the DEQ grants permission to the developer to commence operation, the governing body of the county, on behalf of all local government units in the county, requests the developer to prepay property taxes as specified in the impact plan.

Authority: 90-6-309, MCA; ARM 8.104.211.

- d. In addition, the governing body of each local government unit requests its individual tax prepayments from the developer, according to the schedule provided in the impact plan. Unless the plan provides otherwise, the local government unit also requests the non-tax impact payments and non-financial assistance provided for in the impact plan.

Authority: 90-6-307 and 90-6-309, MCA; ARM 8.104.211.

- e. The developer makes all impact payments directly to the county treasurer, as provided by the plan.

Authority: 90-6-304, MCA; 90-6-305, MCA; 90-6-307, MCA; ARM 8.104.211.

- f. The county treasurer credits each payment to the impact fund of the recipient local government unit. For purposes of tax crediting the treasurer distinguishes tax prepayments from grants or contributions.

Authority: 90-6-307, MCA; 90-6-309, MCA; ARM 8.104.211.

- g. When payment is made directly to the county treasurer, the developer and the local government unit each issue to the Board written verification of each payment requested, made, and received, specifying the amount and method of payment and its intended use in compliance with the impact plan. Forms for providing this information are found in Appendix XI.

Authority: 90-6-307, MCA; ARM 8.104.211.

- h. The developer notifies the Board and the affected local government units within 30 days of the start of production and within 30 days of the commencement of commercial production, as these terms are defined in the plan. If the plan identifies other key events or trigger conditions, the responsible entity, as identified in the plan, notifies the other affected parties to the plan and the Board when a key event or trigger condition occurs.

Authority: 90-6-309(4), MCA; 90-6-311(1)(b), MCA; ARM 8.104.203.

- i. Each fiscal year after the mine starts production, the local government unit calculates the portion of prepaid tax that is to be credited to the developer,

according to the criteria and method established in the approved plan, provided that tax credits:

- Do not extend beyond the productive life of the mine,
- Do not exceed the developer's tax obligation in any given year, and
- Do not shift the increased capital and net operating costs resulting from the development over time to other local taxpayers.

Plans submitted prior to July 1, 1985, are subject to the requirements of the tax crediting formula established in the 1981 Act, including the 10 year limitation on provision of tax credits. Plans submitted after July 1, 1985, are to specify the method for providing tax credits. Chapter II and Appendix XII discuss tax prepayment and tax crediting in greater detail.

Within the limitations and requirements of sections 90-6-301, 90-6-307 and 90-6-309, MCA, ARM 8.104.215, and as specified by the plan itself, each local government unit credits the appropriate amount of prepaid tax to the developer each year, until the full amount of the prepayment has been credited or the statutory time for providing credits has expired.

Authority: 90-6-301, 90-6-307 and 90-6-309, MCA; ARM 2.104.215.

- j. When an approved plan identifies that the construction, renovation, improvement or acquisition of local government facilities will be needed as a result of the mineral development, the local governing body may enter into a written agreement with the owners of the development, under which the developer assumes financial responsibility for a facility impact bond to finance the facilities. The bond agreement must provide for a guarantee of payment of the principal and interest of the bond. The developer and the governing body of the affected local government unit must provide the Board with a copy of the facility impact bond agreement and the payment guarantee. The bond becomes a financial liability against the taxable valuation of the developer, not against the tax base of the local government unit as a whole. A facility impact bond does not affect the indebtedness or debt limits of the local government unit.

Authority: 90-6-307(2) and 90-6-310, MCA; ARM 8.104.211

- k. Local government units may enter into an interlocal agreement for the issue of impact bonds in a combined offering.

Authority: 90-6-310(7), MCA.

- I. The principal and interest of the bond are paid by the local government unit from an annual special levy against the property of the large-scale mineral development in amounts sufficient to retire the bond.

Authority: 90-6-310(2), MCA

6. TAX BASE SHARING

When the Board notifies the DOR that an approved plan has identified a jurisdictional revenue disparity, the developer, the DOR through the county assessor, and the affected local government units implement the tax base sharing provisions of Part 4, Chapter 6, Title 90, MCA. Chapters II, III and IV discuss tax base sharing and Appendix XIII provides a detailed explanation and outline of tax base sharing procedures, which are summarized briefly below.

- a. On or before May 1 of each year, the developer conducts an employee survey to determine the number and place of residence of all employees of the mineral development and the number and place of residence of their school age children. The employee survey encompasses all persons, both immigrants and local residents, who are employed by the developer, its contractors and subcontractors, in the construction or operation of the mine and associated milling facility. The developer reports the results of its employee survey to the DOR through the county assessor.

The Board recommends that the developer provide copies of its draft findings to the affected local government units for their review before submitting the final report to the DOR, in order to identify and correct any discrepancies. Local governments need to conduct a timely review of the draft employee reports in order not to delay the assessment process.

Authority: 90-6-401 to 90-6-405, MCA; Board policy.

- b. If the impact plan assumes the use of the allocation formula provided by the Tax Base Sharing Act, the county assessor distributes the allocable portion of the taxable valuation of the mineral development among affected counties, municipalities, and school districts based on the number and place of residence of employees and their school age children.

However, the impact plan itself may modify the allocation formula in order to provide a more reasonable correspondence between increased costs and increased revenues resulting from the mineral development, in which case the assessor follows the modified formula provided by the approved plan.

Authority: 90-6-403 and 404, MCA.

- c. If requested to do so by a party to the impact plan, the Board determines whether a jurisdictional revenue disparity has ceased to exist. If so, the Board notifies the DOR to terminate tax base sharing for the affected category of local government units.

7. AMENDING AN APPROVED IMPACT PLAN

Authority: 90-6-403(3); Board policy.

A petition to amend an approved plan must contain an explanation of the need for the amendment, a statement of the facts and circumstances underlying the need for the amendment, a description of the corrective action proposed by the petitioner, and the information required by ARM 8.104.217. Appendix XIV provides a format for the petition.

- a. Under conditions specified in the approved plan itself or under conditions specified by statute, the developer or the governing body of the county may petition the Board to amend the plan.

Authority: 90-6-311, MCA; ARM 8.104.217.

- b. At any time, the developer and the governing body of the county may join in a petition for amendment.

Authority: 90-6-311, MCA; ARM 8.104.217.

- c. The governing body of the county may submit a petition on behalf of the county or on behalf of any affected local government unit within the county, at its request. If the petition is filed on behalf of a local government unit other than the county, the petition must also bear the signatures of the governing body of the local government unit requesting the amendment.

Authority: 90-6-311, MCA; ARM 8.104.217; Board policy.

- d. The Board publishes notice of the petition in a newspaper of general circulation in the affected county within 10 days of receiving the petition.

Authority: 90-6-311, MCA.

- e. Within 60 days after publication of the notice, the local government unit or the developer notifies the Board in writing if it objects to the petition and specifies the reasons why the plan should not be amended as proposed.

Authority: 90-6-311, MCA.

- f. If no objections are received within the 60-day review period, the Board amends the plan as proposed by the petitioner.

Authority: 90-6-311, MCA.

- g. Within 10 days of receiving an objection, the Board provides the petitioner with a copy of the objection.

Authority: 90-6-311, MCA.

- h. After the end of the 60-day review period, the petitioner and the objector have 30 days in which to try to resolve the objections. If all objections are resolved within the review or negotiation period, the affected parties submit their signed, written agreement to the Board, and the Board amends the plan as concurred in by the affected parties.

Authority: 90-6-311, MCA; ARM 8.104.209; Board policy.

- i. If objections are not resolved by the petitioner and the objector by the end of the 30-day negotiation period, the Board provides notice and conducts a contested case hearing in the most affected county within 30 days. The hearing must be conducted in accordance with Montana Administrative Procedure Act.

Authority: 90-6-311, MCA.

- j. Following the hearing, the Board issues its findings of fact, conclusion of law, and order. Based on its determinations, the Board then approves, rejects, or amends the proposed amendment.

The Board serves its findings and the approved amendment, if any, on all parties to the plan.

Authority: 90-6-311, MCA.

- k. Either a local government unit or the developer may request judicial review of the Board's determination in the district court of the judicial district in which the hearing was held.

Authority: 90-6-311, MCA.

- l. If a local government unit's objection or judicial appeal is held to be valid and results in a remedial action being taken by the Board or court, the Board or court must award and the developer must pay to the local government the reasonable costs and attorney fees associated with the hearing or judicial appeal process.

Authority: 90-6-307, MCA.

8. ENFORCING THE DEVELOPER'S COMMITMENTS

- a. If a permittee fails to comply with its commitments in an approved impact plan, the affected local government unit notifies the Board.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy

- b. If the matter is not resolved between the parties, the Board provides notice and holds a contested case hearing to determine whether the developer has failed to comply with its commitments in an impact plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts. Although the Board may initiate an inquiry into the parties' compliance with the requirements of the two Acts, it will adjudicate the question of the developer's compliance with its commitments in an

approved impact plan only if requested to do so by an affected local government unit.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy.

- c. If the Board determines that the developer has failed to comply with its commitments in the approved plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

- d. If notified by the Board that a permittee is not complying with its written guarantee, its commitments including the payment schedule provided in the approved plan, or with the review and implementation requirements in Title 90, Parts 3 and 4, the DEQ must suspend the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA.

- e. The permit remains suspended until the Board provides the DEQ with written notice that the permittee is again in compliance, at which time the DEQ reinstates the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

- f. If the developer fails to prepay taxes or make other payments encompassed by the financial guarantee in a timely manner, the Board may draw upon the financial guarantee to make the required payments.

Authority: 90-6-309, MCA; ARM 8.104.211 and 8.104.214.

9. IMPACT PLAN WAIVERS FOR LARGE-SCALE PERMITTEES

- a. Each mineral developer that applies for and receives a hard-rock mine operating permit on or after May 18, 1981, must send periodic employee reports to the DEQ, as required by the Department.

In the report, the developer certifies to the number of persons employed by the developer and its contractors in the construction and operation of the mineral development during the preceding year and the number they expect to employ in the coming year.

Authority: 82-4-339, MCA; 90-6-302, MCA; and 90-6-307, MCA.

- b. Whenever the DEQ determines that a permittee has become or will become a large-scale mineral development as defined by 90-6-302, MCA, the DEQ immediately notifies the permittee, the Board, and the county or counties in which the mining operation is located. The permittee is then subject to the requirements of the Impact Act.

The applicable definition of "large-scale" mineral development is the definition that was in effect when the DEQ issued the permit. The original definition, effective May 18, 1981, was amended effective July 1, 1985.

Authority: 82-4-339, MCA; 90-6-302, MCA.

- c. Upon being notified of DEQ's identification of a large-scale permittee, the Board and the affected county or counties determine which local government units may be affected by the increase in employment or by associated changes in the mining operation.

Authority: 90-6-307, MCA.

- d. The large-scale permittee may petition the Board for a waiver of the impact plan requirement.

Authority: 90-6-307, MCA.

- e. Within 6 months of when the permittee receives notice from the DEQ that it has, or is expected to, become a large-scale mineral developer, the permittee must file proof with the DEQ that it has been granted a waiver by the Board or has filed an impact plan with the Board, as required by 90-6-307, MCA.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.218.

- f. If the developer requests a waiver, the Board provides notice and an opportunity for a hearing to the permittee and all potentially affected local government units.

Authority: 90-6-307, MCA; ARM 8.104.218; Board policy

- g. If local government units and the permittee do *not* expect the increase in employment or changes in the mining operation to result in a need to increase local government services or facilities or if they do *not* expect the increased need for services or facilities to result in increased costs to the non-developer taxpayer, they may notify the Board in writing to this effect. If the increase in employment or changes in the mining operation have resulted or are expected to result in an increased need for services or facilities, the affected local government may request a hearing at which it may present testimony and evidence to this effect.

Authority: 90-6-307, MCA; ARM 8.104.218.

- h. The Board will hold a hearing only if requested by the permittee or an affected local government unit. The hearing, if requested, will address the matter of granting a waiver or conditional waiver or requiring an impact plan and may address the potential provisions of a conditional waiver.

Authority: 90-6-307, MCA; Board policy.

- i. Following the hearing or the receipt of written testimony, the Board determines whether to grant or deny a waiver or conditional waiver and what, if any, conditions to impose on a waiver.

The Board will grant a waiver or a conditional waiver:

- (a) if the permittee and the governing bodies of the affected local government units certify in writing that they do not anticipate a need to increase local government services and facilities as a result of the increase in employment, or that the anticipated increase in need for services and facilities will not result in an increase in local government costs to the non-developer taxpayer;
- (b) If no local government unit requests that the Board deny the waiver or require an impact plan; or

- (c) If, after giving notice and holding a public hearing, if one has been requested, the Board deems it unlikely that any affected local government unit will experience adverse fiscal impacts as a result of the increase in employment or associated changes in the mining operation.

The Board may grant a conditional waiver, rather than a full waiver, if it appears that the development will result in isolated, easily identifiable impacts and costs which can be readily addressed through a conditional waiver, or if, for other reasons, the need for a conditional waiver is demonstrated to the satisfaction of the Board, as might occur, for example, if an affected service or facility was near capacity and could be adversely affected by even a small additional increase in employment or immigration resulting from the mineral development. The Board may grant a waiver without a hearing if no hearing is requested.

Authority: 90-6-307, MCA; ARM 8.104.218.

- j. Within 6 months of receiving notice from the DEQ that the permittee has become or is expected to become a large-scale mineral developer, the Board must certify to the DEQ whether the Board has granted a waiver or the permittee has filed an impact plan, as provided by 90-6-307, MCA. Following its determination, the Board provides a copy of the waiver, conditional waiver or denial of waiver to the permittee, the affected local government units and the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.218.

- k. If a permittee fails to comply with the terms of a conditional waiver or with the impact plan review and implementation requirements of the Impact Act, the affected local government unit notifies the Board. If matters are not resolved by the parties, the Board holds a contested case hearing to determine the accuracy of the allegation of noncompliance. If the Board determines that a permittee has failed to comply with its commitments in a conditional waiver or with the impact plan review and implementation requirements of Title 90, Chapter 6, Parts 3 and 4, the Board must notify the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211; Board policy.

- I. The DEQ must suspend the operating permit of a permittee that fails to file the required proof of having obtained a waiver, to file an impact plan, if one is required, or to comply with the review and implementation requirements of Title 90, Chapter 6, Parts 3 and 4, including the requirements of a conditional waiver.

Authority: 82-4-335, MCA.

- m. The Board certifies to the DEQ when it determines that a previously non-complying permittee is again complying with requirements of the Impact and Tax Base Sharing Acts, including the requirements of an impact plan or a conditional waiver.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

- n. Following the Board's certification that the permittee is again in compliance with the requirements of Title 90, Chapter 6, Parts 3 and 4, the DEQ reinstates the operating permit.

Authority: 82-4-335, MCA.

- o. Under the circumstances specified by statute or as provided in a conditional waiver, an affected local government unit may request that the Board revoke a waiver or conditional waiver.

When such a request is made, the Board may revoke the waiver or conditional waiver:

- (i) If the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons,
- (ii) As provided in a conditional waiver, or
- (iii) If the developer fails to comply with a conditional waiver.

Authority: 90-6-307, MCA.

- p. The Board notifies the permittee and affected local government units of the request to revoke a waiver or conditional waiver and provides an opportunity for a hearing on the request. Following the hearing, if one has been requested, or at the expiration of the time during which a hearing might have been requested, the Board determines whether to revoke the waiver or conditional waiver. The Board notifies the permittee, the affected local government units and the DEQ, in writing, of its revocation of any waiver.

Authority: 90-6-307, MCA; ARM 8.104.211.

- q. If the Board denies or revokes a waiver, the permittee must comply with the impact plan requirements of Title 90, Chapter 6, Parts 3 and 4.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.218.

CHAPTER II

PREPARATION OF A LOCAL GOVERNMENT IMPACT PLAN

A. OVERVIEW

The Purpose of the Impact Plan

A mineral developer that applies to the DEQ for a permit to construct and operate a new, large-scale hard-rock mine in Montana must also prepare a local government impact plan, as required by the Hard-Rock Mining Impact Act. [82-4-335, 90-6-307, MCA] The purpose of the impact plan is two-fold:

1. to enable affected local government units to provide services and facilities when and where they are needed as a result of the proposed mineral development and, at the same time,
2. to spare local taxpayers and residents the burden of having to pay the increased costs of these services and facilities. [90-6-301, 90-6-307, MCA]

The impact plan focuses primarily on the early or "front-end" local government service and facility needs and fiscal impacts resulting from the mineral development. However, the plan may also address ongoing monitoring, amendment, cost and revenue issues, including tax base sharing and tax crediting. [90-6-301, 90-6-307, 90-6-309, 90-6-311, 90-6-403, 90-6-404, 15-37-117, MCA] In some circumstances, the advent of a new hard-rock mine may result in little or no increased cost for local government units. In others, the increase in service and facility needs and costs may be substantial. In either case, the construction and operation of the mine ordinarily brings increased employment to the impact area and, eventually, increased tax base and tax revenue to the affected local government units.

Preparing the Impact Plan

Affected local government units should cooperate with the developer in preparing the draft plan. Acting through the governing body of the county, the governing body of any affected local government unit may request the developer to provide "financial or other assistance" as necessary to help the local government unit "prepare for and evaluate the impact plan." The developer must provide the requested assistance. [90-6-307(3), MCA] If the

assistance is financial, it is treated as a tax prepayment from the developer. [90-6-307(3), 90-6-309, MCA];

ARM 8.104.203(4)(b) and (c), 8.104.215] Typically, when assistance is needed, the county arranges for it to be provided to all affected local government units within its boundaries. The county also helps to coordinate local government efforts to prepare for and review the impact plan. [90-6-307(3) and (4), MCA]

The plan provides a timetable for the construction and operation of the mine and its associated facilities, and it projects the number of people expected to move into the area as a result of the development. [90-6-307(1)(a) and (b), MCA; *ARM 8.104.203(4)(a)*] The plan then identifies the additional local government services and facilities that will be needed and the increased capital, operating and net operating costs of providing these services and facilities. [90-6-307(1)(c) and (2), MCA; *ARM 8.104.203(4)(a) and (b)*] In the plan, the developer must commit to pay all identified, increased local government capital and net operating costs resulting from the development. [90-6-307(1)(d) and (2), MCA; *ARM 8.104.203(4)(b)*]

The plan specifies whether the developer will meet these financial obligations through property tax prepayments, facility impact bonds, grants or other financing mechanisms that do not shift the burden of increased costs to other local taxpayers. [90-6-301, 90-6-307(1)(d) and (2), 90-6-309, 90-6-310, MCA; *ARM 8.104.203(4)(b), 8.104.215]* The plan also identifies any non-financial assistance the developer will provide that will forestall or reduce local government costs or ensure other benefits. [90-6-307(1)(d), MCA; *ARM 8.104.203(4)(a)*] The plan must include a schedule of the developer's impact payments. [90-6-307(2), MCA; *ARM 8.104.203(3)(b)*]

If the plan calls for the developer to prepay property taxes, it must also provide for the local government's future calculation and provision of tax credits to the developer. [90-6-307(2), 90-6-309(4) and (5), MCA; *ARM 8.104.203(4)(c), 8.104.215]* Certain constraints apply to tax crediting. [90-6-301, 90-6-307(2), 90-6-309(4) and (5), MCA; *ARM 8.104.203(4)(c), 8.104.215]* Impact costs should be met through tax prepayments only when the subsequent provision of tax credits appears both feasible and appropriate.

To ensure that the plan functions effectively, the plan may need to include definitions, criteria, and procedures consistent with, but supplementary to, the provisions of statute or rule. [90-6-307, 90-6-309, 90-6-310, 90-6-311, and 90-6-404(5), MCA; *ARM 8.104.203, 8.104.211, 8.104.215]*

The Plan and Tax Base Sharing

An impact plan triggers property tax base sharing if it projects that a mining development will create a "jurisdictional revenue disparity." [90-6-307, 90-6-402, 90-6-403, MCA] Such a disparity exists when, as a result of the mine, increased local government costs will exceed increased revenues in a county, municipality or school district in which the mine is not located, or in which an insufficient portion of the mine's valuation is located. Tax base sharing requires that the post-permit increase in taxable valuation of the mineral development be apportioned among the affected counties and incorporated cities or towns; high school districts; and elementary school districts. [90-6-403, 90-6-404, MCA] The allocation to these three tiers of governmental entities may be made according to:

1. a statutory formula,
2. based on where local and in-migrating mine employees and mine-related students reside, or
3. the plan itself may modify the formula in order "to ensure a more reasonable correspondence between the allocation of taxable valuation and the occurrence of increased costs resulting from the development." [90-6-401, 90-6-404, MCA]

Tax base sharing:

- benefits the developer by allowing it to pay more of the impact costs through tax prepayments, which, unlike outright grants, may be reimbursed by future tax credits. [90-6-307(2), 90-6-309(5), MCA]
- benefits the recipient local government units by providing an ongoing revenue source that, at a minimum, should eventually equal or exceed the increase in costs resulting from the mineral development. [90-6-401, 90-6-404, MCA]
- does not affect the taxable valuation of the mineral development, but because of differences in jurisdictions' individual mill levies, tax base sharing may affect the total amount of property tax paid by the developer.
- not affect capital and operating costs, but by increasing or decreasing potential mine-related revenue, it may affect net operating costs, tax prepayments, and tax credits.

Tax base sharing and tax crediting occur during the implementation of the plan. The plan itself needs to anticipate and provide for the procedures, requirements and effects of its implementation, including, if applicable, tax base sharing and tax crediting. The plan also

may need to provide for the amendment of its tax base sharing and tax crediting provisions.

Commitment and Flexibility in the Impact Plan

In order to enable local governments to meet actual impact needs under changing circumstances, a plan needs to strike an appropriate balance between commitment and flexibility. In anticipating the implementation of the plan, the developer and affected local government units should assume that actual events or circumstances will inevitably differ in some regard from what the plan projects. To deal with this likelihood, the plan should articulate the definitions, data and assumptions on which it is based and should set out criteria and procedures for monitoring what actually occurs and for initiating changes in the plan, if changes are needed.

The Impact Act identifies circumstances under which an approved impact plan may be amended and establishes the procedure for making amendments. *[90-6-311, MCA]* Critically, the Act also provides that the impact plan itself may specify additional conditions under which the plan may be amended. *[90-6-311(1), MCA, first sentence]* This allows the developer and local government units to tailor amendment criteria to their local situation. The amendment process may be initiated by either or both parties, depending on the circumstances. *[90-6-311, MCA; ARM 8.104.217]*

In addition, the developer and local government units may decide that they would like to be able to make limited changes to the plan without resorting to the formal and time-consuming amendment process. The Board has concluded that, under certain circumstances and within limits that protect the interests of the affected parties, the developer and affected local government units may make adjustments contemplated by the plan itself by means of a written agreement submitted to the Board. That is, the developer and local government units may describe in the plan the specific conditions, criteria and procedures under which they might adjust the plan in specific ways. When implementing the plan, they notify the Board of any such adjustments through a written, signed statement signed by the affected parties. To the extent possible, the parties to the plan should try to anticipate the potential need for adjustments.

The Plan and the Regulation and Operation of Local Governments

Except as otherwise provided in the Impact and Tax Base Sharing Acts, the content and implementation of an impact plan must be consistent with the laws and regulations which apply generally to local government units in the exercise of their powers and duties. These

requirements pertain to such matters as procedures, service levels and standards, facility design standards, staffing criteria and personnel qualifications, revenue sources and limitations, and state or federal agency review or approvals. Although perhaps less immediately visible than direct service needs and costs, procedural requirements are important in calculating the lead-time required in order for a local government unit to make additional facilities and services available when they are needed as a result of the mineral development. An evaluation of procedural requirements may also indicate the level of management capability the local government unit will need in order to implement the plan.

Mineral Development Revenue, and Local Government Budget Amendments

A local government unit must formally budget to expend money received from a mineral developer under an impact plan or under provisions of the Impact and Tax Base Sharing Acts. [ARM 8.104.211(2)] If the budget has already been adopted for the fiscal year in which the developer is to make a payment, the governing body may amend its budget by a majority vote to provide for the receipt and expenditure of the developer's payment. [90-6-323, MCA] This authority to amend a budget applies to the financial assistance provided by the developer to help local governments prepare for and evaluate an impact plan, as well as to payments under the plan itself. [90-6-307(3), 90-6-323, MCA]

Responsibility for the Plan

Both the developer and the affected local government units are responsible for ensuring that the impact plan contains the information, functional provisions and commitments required or contemplated by the Impact Act. [90-6-307, 90-6-309, 90-6-310, 90-6-311, MCA; ARM 8.104.203] Both must also ensure that, if applicable, the plan contains the information required or contemplated by the Property Tax Base Sharing Act and by section 15-37-117, MCA, which allocates a portion of the State's metal mines license tax revenues to certain counties and school districts. [90-6-404, MCA; 15-37-117(1)(d) and (2), MCA; ARM 8.104.203(4)(g)]

Review of the Proposed Plan

When the developer completes the proposed impact plan, it submits the plan to the Board and to the affected local government units, with sufficient copies for public review. [90-6-307(1) and (4), MCA; ARM 8.108.204] This action initiates a 90-day review period during which affected local governments review the entire proposed plan to be sure that it meets the requirements and expectations of statute and that it will enable them to meet their actual impact needs and costs, even if, over time, those needs and costs should differ from

what is being projected in the plan. [90-6-301, 90-6-307, 90-6-311, MCA; ARM 8.104.203; ARM 8.104.204.]

During the review period, the county is required to provide notice of and to hold at least one public hearing on the proposed plan, for the benefit of all interested persons and affected local government units. [90-6-307(4), MCA] During this review period, if the governing body of an affected local government unit disagrees with any part of the proposed plan or if it finds that something has been omitted from the plan, the governing body may file a formal objection with the Board. [90-6-307(5) and (6), MCA; ARM 8.104.208] Only the governing body of an affected local government unit may file an objection. If the developer and local governing body are unable to resolve their differences through negotiation, the Board adjudicates the dispute. [90-6-307(7), MCA] The Board holds a hearing on the disputed issues and makes its determination within 60 days following the hearing. The Board then amends the plan, if needed, to implement its findings and order. [90-6-307(8), MCA]

Enforcement of the Plan

The approved impact plan is a requirement of the statutes under which the DEQ issues an operating permit to the mineral developer. [82-4-335(5), MCA] If a large-scale mineral developer fails to comply with the Impact Act, the Tax Base Sharing Act, or commitments made in an approved impact plan, the Board must notify the DEQ, and the Department must suspend the developer's operating permit. [82-4-335(5) and (6), MCA; 90-6-307(11), (14) and (15), MCA; ARM 8.104.211(3)] When the developer resumes compliance, the Board notifies the Department and the Department reinstates the operating permit. [82-4-335(5) and (6), MCA; 90-6-307(15), MCA]

The Beneficiaries of an Impact Plan

In effect, the hard-rock mining impact plan is more than the sum of its individual parts. The plan combines social and economic impact assessment, local government fiscal impact analysis, growth management strategies, and impact mitigation planning. The plan contains impact mitigation and monitoring commitments by the developer and affected local government units, along with provisions for its adjustment, amendment and implementation. [90-6-307, 90-6-309, 90-6-310, 90-6-311, 90-6-404, MCA; ARM 8.104.203, 8.104.211, 8.104.215] Although the mineral developer and the affected local government units prepare and implement the impact plan, and benefit from it, the primary beneficiaries of the impact plan are the existing and new residents and taxpayers of the communities affected by the mineral development. [90-6-301, 90-6-307, MCA]

The Context in Which the Plan Functions

If it is to serve its purposes, the impact plan must be readily understandable to those who prepare, review, implement or adjudicate it. Almost by definition, an impact plan will be implemented under the stress of change, including changes of personnel, as well as changes in circumstances. Despite the desirability of continuity of personnel, the persons who prepare and review the impact plan may not be the same as those who ultimately must implement it. Local government staff and elected officials, company personnel and corporate owners change, as does the membership of the Hard-Rock Mining Impact Board. If called upon to adjudicate disputes about the approved plan, the Board, in general, must rely largely on the language of the plan, interpreted in the context of the Impact Act, to determine what the plan intends. It is important for all concerned that the plan be clearly worded and complete, that it completely articulates all the assumptions and definitions on which it is based, and that it set out all "understandings" about how it is intended to function. *[ARM 8.104.203]*

The developer and local government officials both benefit from the process of evaluating potential impacts and providing appropriate mitigation measures and needed assistance. Their need for a good working relationship does not end with the preparation of the impact plan, but extends throughout the implementation of the plan and the life of the mining project. If, as knowledgeable people working together in a responsible, cooperative and responsive manner, they achieve mutual credibility and establish and maintain a good working relationship, they will be better able to avoid, minimize or correct unanticipated problems before those problems assume major proportions.

B. CHARACTERISTICS OF AN IMPACT PLAN

The substance and format of an impact plan and the qualities that help it to function well are discussed in more detail below. An impact plan consists of definitions, assumptions, data, analyses, projections, proposed actions, criteria, procedures and commitments, all of which need to be clearly articulated.

1. Clarity and flexibility are among the potentially most important characteristics of a workable impact plan, which should incorporate:
 - a. clear statements of the definitions, assumptions, data, analyses and projections upon which the plan is based;

- b. a clear statement of each proposed action and commitment by the developer or by a local government unit, including when or under what circumstances the action is to occur;
 - c. clear and adequate provisions for monitoring employment levels, population in-migration and distribution, and the effect of the in-migration and the development itself on local government facilities, services, costs and revenues; and
 - d. clear and adequate criteria and procedures for adjusting and amending the plan.
2. The data, information, assumptions, projections and commitments in the plan should include:
- a. the anticipated schedule of the mineral development;
 - b. the number and skills of employees needed at each phase of the construction and operation of the mine and associated facilities;
 - c. the number of employees potentially available from the local workforce, given the skills of both unemployed and underemployed persons in the area, the training to be offered by the mineral developer, comparative job opportunities and wages, and preferred working conditions;
 - d. the number of non-mining jobs that may be created as a result of the mineral development, the number of jobs that may be vacated as a result of new job opportunities and job shifting, and from the newly created or vacated jobs, the number that are likely to be filled from the local workforce and the number likely to be filled by in-migrating workers;
 - e. the number and demographic characteristics of people expected to move into the area because of the mineral development, including the anticipated number and ages of in-migrating students;
 - f. the timing and rate of in-migration, including how long temporary employees are likely to remain in the area;
 - g. the probable housing needs and preferences of the in-migrating population;

- h. the location and availability within reasonable commuting distance of the mining project of existing housing, subdivided lots with services available, and lots and sub dividable land potentially accessible by services and considered appropriate for housing;
- i. the probable distribution of in-migrants by local government jurisdiction (which may be influenced by community amenities, the availability of housing and lots, housing preferences, and commuting distances, conditions and travel time);
- j. a list of the local government units potentially affected by the mineral development (including those within which the development will be located, those within which mineral development employees are expected to reside, and those that are expected to experience an increase in demand for local government services and facilities as a result of the mineral development);
- k. by jurisdiction, the type and level of local government services and the type and capacity of local government facilities that will be needed by the mineral development, the in-migrating population, and the local population as a result of the mine;
- l. the current capacity and condition of potentially affected local government services and facilities and their operating, maintenance and capital needs and costs;
- m. a schedule of when additional facilities and services will be needed as a result of the mine;
- n. a description of how and by whom the needed facilities and services will be provided;
- o. a schedule showing how much lead-time local governments will require in order to make facilities and services available when and where they are needed; and how much time communities will need to meet increased housing needs;
- p. the increased capital and operating costs of preparing and providing the governmental services and facilities that will be needed;

- q. a schedule showing when these costs will occur, by fiscal or impact year;
- r. a schedule showing, by revenue source, when and by how much local government revenues will increase as a result of the mine (without increasing mill levies or fees);
- s. the net operating costs resulting from the mineral development, by service and by fiscal or impact year;
- t. the schedule of when and by what method the developer will pay to local government units all increased capital and net operating costs resulting from the mineral development;
- u. the non-financial assistance the developer will provide and when it will be provided;
- v. a description of how each local government unit will calculate and provide tax credits for prepaid taxes, including any prepayment made to help the local government unit prepare for and evaluate the proposed impact plan;
- w. a description of the proposed monitoring agreement, including which aspects of the impact plan or circumstances related to the plan will be monitored, how often, and by whom; to whom the monitoring results will be provided; and how and by whom the results will be evaluated and recommendations made for changes;
- x. the circumstances, criteria and procedures under which the plan may be adjusted or amended;
- y. other provisions or conditions that will facilitate the review, implementation, monitoring, adjustment or amendment of the plan; and
- z. such additional information as may be needed to meet the requirements and expectations of the Property Tax Base Sharing Act and the statutes allocating metal mines license tax revenue. *[See 15-37-117, 90-6-302, 90-6-307, 90-6-309, 90-6-310, 90-6-311, 90-6-402, 90-6-403, 90-6-404 and 90-6-405, MCA; ARM 8.104.203 and 203A, 8.104.211 and 8.104.215]*

As a freestanding document, an impact plan must contain all of the applicable information and provisions required or contemplated by statute and rule, as well as such other information as will be needed for the review, implementation, and amendment of the plan. *[ARM 8.104.203, 8.104.211, and 8.104.215]*

Some affected local government units may need to strengthen their community planning, management, and administrative capabilities in order to prepare for, evaluate, dispute or implement an impact plan. In recognition of this need, the Impact Act authorizes the affected local government units to request financial and other assistance to help them "prepare for and evaluate" the proposed impact plan. *[90-6-307(3), MCA]* The Act provides for reimbursement of reasonable costs incurred by a local government unit in filing and defending a successful objection to a proposed plan or plan amendment. *[90-6-307(13), MCA]* The plan itself can provide for the planning, management and administrative needs and costs incurred by local government units in implementing an approved plan. *[90-6-307(1) and (2), MCA]*

C. STATUTORY AND REGULATORY REQUIREMENTS FOR THE CONTENT OF AN IMPACT PLAN

The Board has summarized the minimal statutory and regulatory requirements for the content and format of an impact plan in its administrative rule, *ARM 8.104.203*. The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and how the parts relate to one another. At a minimum, the plan must contain information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan. In addition to their statutory requirements, the Impact Act, the Tax Base Sharing Act, and the statutes that allocate metal mines license tax revenues, all impose certain expectations on the content and function of an impact plan. The plan should reflect these expectations. *[See 90-6-307, 90-6-309, 90-6-310, and 90-6-311, MCA; 90-6-403 and 90-6-404, MCA; 15-37-117, MCA; ARM 8.104.203, 8.104.211 and 8.104.215]*

The basic statutory and regulatory requirements for the content of an impact plan are discussed below.

1. List of Affected Local Government Units *[90-6-302(4); ARM 8.104.203(2)(c)]*

The plan is to contain:

a list of the local government units the developer believes might be affected by the development. [ARM 8.104.203(2)(c)]

For impact plan purposes, "local government unit" means a county, incorporated city or town, school district, or any of the following independent special purpose districts: rural fire districts, public hospital districts, refuse disposal districts, county water and/or sewer districts, and county park districts. [90-6-302(5), MCA] Impacts to other types of districts or taxing areas, such as weed control districts and rural special improvement districts, are to be addressed by the governing body of the county or municipality in which the subordinate district or taxing area is located.

The Tax Base Sharing Act excludes all special districts from its definition of local government units that participate in tax base sharing. [90-6-402(5), MCA]

By definition and usage in the Impact and Tax Base Sharing Acts, a local government unit is "affected" if the mineral development is located within its jurisdictional boundaries or if it is expected to experience an increased need to provide services or facilities as a result of the mineral development. [90-6-302, MCA; 90-6-402, MCA] Under certain circumstances, a county that meets neither of the above criteria but experiences an increase in employment as a result of the mineral development may also be an affected local government unit for purposes of metal mines license tax distribution. [15-37-117, MCA] The definitions of "local government unit" and "affected" local government unit are discussed in greater detail in Appendix II.

The governing body of the affected county is to help the mineral developer identify those local government units that appear likely to be affected by the mineral development. The developer prepares the plan with their cooperation. As early in the process as possible, the developer is to provide the Board with a list of the names and addresses of the local government units it considers potentially affected by the mineral development.

2. Timetable for Development [90-6-307(1)(a), MCA; ARM 8.104.203(4)]

The plan must contain the following information:

a timetable for development, including the opening date of the development and the estimated closing date. [90-6-307(1)(a), MCA]

Based on developer's plans and expectations, the timetable identifies when construction will begin, how long the construction period will last, when the mine and mill will begin

operation, when they will reach full production, and the anticipated closing date of the mine. The timetable typically outlines the employment schedule for the construction and operating workforce, identifying the number of workers needed by skill on a monthly basis from the beginning of construction to full operation of the mine and mill.

Because of statutory provisions for tax crediting and for amending a plan, the plan needs to define "start of production" and "commercial production." The timetable should identify the approximate dates when the developer expects "production" and "commercial production" to begin. [90-6-307, 90-6-309, 90-6-311, MCA; ARM 8-104-203(4)]

While the plan is being prepared and reviewed, it is sometimes difficult, if not impossible, for the developer to identify even the approximate date on which construction will begin. If that is the case, the plan may, instead, specify that the developer will provide advance notice to the affected local government units and the Board within not less than a specified length of time prior to the beginning of construction. The length of time should be sufficient to allow for preparation of the services, facilities and housing that need to be in place when construction begins, as identified in the plan. At the same time, the plan should specify that the construction schedule to be provided by the developer will constitute an adjustment to the plan. The plan may also provide that if commencement of construction begins a significant length of time after the plan is approved, the lapse of time constitutes a condition under which the plan may be amended as provided by *section 90-6-311(1), MCA*.

When and how other activities are scheduled may also be important to the affected local governments and communities, such as when large or heavy equipment is to be moved that could impede traffic, disrupt school transportation, or affect county roads or bridges. Even though the plan may not be able to specify just when these activities will occur, the plan might include a commitment by the developer to notify any affected local government units sufficiently in advance to enable them to work with the developer and, if need be, with adjacent landowners to identify and forestall potential problems.

The timetable of the development may change while the plan is under review or after the plan has been approved. The entire project may be delayed, the construction schedule may be accelerated, or other significant changes may occur. When this happens, the developer should notify the affected local government units and the Board.

3. Estimated Number of Persons Coming into the Impact Area [90-6-301, 90-6-307(1)(b), MCA; ARM 8.104.203(4)]

The impact plan must identify:

the estimated number of persons coming into the impacted area as a result of the development. [90-6-301, 90-6-307(1)(b), MCA]

Before estimating the number of in-migrants, the mineral developer and affected local government units need to define what they mean by "persons coming into the impacted area as a result of the mineral development." [90-6-301, 90-6-307(1)(b), MCA; ARM 8.104.203(4)] The definition may include persons moving into the area who seek or obtain employment in the construction or operation of the mine and mill, their accompanying families and household members, and other persons who move into the area because of job shift or derivative employment opportunities resulting from the mineral development, including local public sector employment.

The Impact Act defines a large-scale mineral development in terms of the number of persons employed in the construction and operation of the mine and associated milling facility, whether they are employed by the developer or by contractors or subcontractors at the site. Although the Impact Act does not define "mineral development employee" or "mineral development student," the Tax Base Sharing Act defines both terms for its purposes. [90-6-402(6) and (7), MCA] In addition to persons who are already employed by the mineral development when they move into the impact area, an impact plan often defines in-migrating mineral development employees also in terms of the length of time the person has lived in the area prior to seeking or obtaining employment at the mineral development.

Not all of the people who move into the area as a result of the mineral development come at once and not all stay for the duration of the project. Because of the requirements of the mining project, there is likely to be more fluctuation in numbers and more turnover in employees (and students) during the construction phase of the development than during its operation. For mineral development employees and their families, actual numbers, ages of students, and rate of turnover can be ascertained as part of the developer's commitment to monitoring. It may be more difficult to project and monitor other mine-related in-migrants and the timing of their in-migration.

For the most part, persons moving into the area because of job shift or derivative employment opportunities tend to come somewhat later than the development's construction employees. Early in-migrants might include persons who come in search of employment at, or resulting from, the mineral development, persons involved in the construction of housing and local government facilities needed as a result of the mineral

development, and public employees, such as teachers, needed as a result of the development. Some in-migrants may be in the area only for a short time, while others may become permanent residents.

The number of people moving into the area as a result of the mineral development will be influenced by the general economic condition of the area and by the potential number of employees available from the local workforce, given the skills of both employed and unemployed persons in the area, the training to be offered by the mineral developer, comparative job opportunities and wages, and preferred working conditions. In addition to persons listed as unemployed with Job Service offices, others who do not appear in unemployment statistics may enter, or re-enter, the workforce, such as spouses who were not previously employed outside the home and current local high school and college graduates. Spouses and other family members of in-migrating workers may also fill some of the newly available jobs at the mine or in the community, which would reduce the level of potential in-migration.

In preparing the plan, the developer and local government units should work together to arrive at mutually acceptable definitions, data, and assumptions about the available workforce and about the number and demographic characteristics of the people who are expected to move into the area as a result of the development, where they are likely to reside, when they will arrive, and how long they are expected to remain in the area. All of these factors will affect local government services and costs. Sample definitions are provided in Appendix II.

4. Increased Capital and Operating Cost to Local Government Units [90-6-307(1)(c), MCA; ARM 8.104.203(4)]

The impact plan must identify:

the increased capital and operating cost to local government units for providing services which can be expected as a result of the development. [90-6-307(1)(c), MCA]

In the process of projecting the increased capital and operating costs resulting from the development, the developer may ask affected local government units to provide a considerable amount of data and information about the availability of housing, subdivided lots and sub dividable land; the capacity, condition, current needs and financing of services and facilities; alternative methods of providing or financing services and facilities; and applicable local, state or federal policies, plans, criteria or standards affecting the provision

of services and facilities. Local governments may also need to provide information about the procedures they are required to follow in matters such as hiring and training employees; soliciting bids; acquiring rights-of-way, easements and sites; obtaining State or federal permits; and issuing bonds. Some local governments may need to consider whether the mineral development might result in an increase in taxable valuation or population that would change their classification or cause them to become subject to different statutory or regulatory requirements, and, if so, to identify the fiscal implications of the change, such as requirements for additional staff or elected officials, increased pay, or reduced mill levy limits.

In some cases, existing local government documents may contain useful data or information, including annual budgets, community needs assessments, comprehensive plans or growth policies, zoning requirements, housing studies, capital improvements plans, facility studies, and school policy statements. In other cases, updated or new information may need to be generated.

While the provision of housing for mineral development employees is not a local government responsibility, the plan must address where mineral development employees and in-migrants will likely reside, for purposes of both impact planning and tax base sharing. Where in-migrants reside is a major factor in determining where local government services will be needed and where costs will be incurred. How long in-migrants stay, or expect to stay, in the area may influence the local government services they need, as well as the type of housing they seek. Some construction workers may need housing only for a few weeks, others for several years. Operating employees and other in-migrants may need housing for the life of the mine, and perhaps longer. Short term housing needs may be met by recreational vehicle sites, motels, room rentals, or construction work camps. Mid-range and long-term needs may be met by mobile home parks, modular homes, or conventional single or multi-family housing units.

Where people live depends partly on local conditions, including the availability of housing, public services, and developed lots, comparative community amenities, and the commuting distance, time, and conditions to the mine. Workers' perceptions of the probable stability and life of the mining project may affect their housing preferences. The developer may influence where people live by deciding to provide, or not to provide, recreational vehicle and mobile home sites, construction worker housing, developed housing sites, or assistance in financing housing development and acquisition. The developer may also influence where people live by its employee transportation policies and practices.

Cities, towns and counties may influence where people live through their planning and growth management strategies, including zoning. Lack of planning and growth management strategies may result in uncontrolled growth, which is ultimately more disruptive of the community and more expensive and time-consuming for both the local government units and the developer.

Unless care is taken, the increased demand for housing may reduce housing availability and affordability for existing fixed-income or low-income residents and for in-migrating public sector service providers, who are often paid less than in-migrating mineral development employees. In some cases, local government units may be involved in providing low-income housing or, in special circumstances, in providing housing for teachers. By working together, the developer, local government units and community may be able to avoid displacing existing residents, while ensuring affordable housing for incoming service providers and mine employees.

If the development will result in a relatively large in-migration in comparison with the size of the affected communities, the developer and local government officials may wish to confer with local financial institutions and others to be sure that timely financing will be available for in-migrants in need of housing. Because the provision of housing in general is not a local

government service, the impact plan cannot require the developer to provide or assist with housing for its employees. However, a developer may choose to help meet employees' housing needs in order to ensure a stable workforce. Also, the DEQ may require the developer to assure housing availability for its workforce as a condition of its operating permit, if the need for such assistance is identified in the agency's environmental review. Housing availability and location are critical from the perspective of the impact plan. The developer and the affected local government units cannot project local government facility and service needs and costs, as required by the Impact Act, until they determine where people are likely to live and when housing will be needed and available.

In addition to services provided to the in-migrating population, services may be needed by the mining project itself, or, in some cases, by the existing population, as a consequence of the development. The level of service needed may vary from one phase of the development to another. For instance, schools may require more professional and support staff per student during the construction phase of the mine than when the mine begins operation and the workforce and student population stabilize. Even when the development employs a predominately local workforce and very little in-migration occurs, the mining project itself may increase the need for certain services, such as road and bridge

construction and maintenance, solid waste collection and disposal, and law enforcement and other emergency services.

As noted, the primary purpose of the impact plan is to enable local governments to provide services and facilities when and where needed as a result of the development without imposing the increased costs on local residents and taxpayers. The developer is responsible for paying all increased capital and net operating costs of the services and facilities, and, in general, the local government units are responsible for actually providing the additional services and facilities. If facilities and services are already inadequate for the existing population or if they fail to meet required standards, the developer and affected local government unit may have to determine their respective fair-share financial responsibilities.

In order to provide needed facilities and services, local governments may have to:

- Undertake an array of preparatory tasks and to follow procedures or meet standards that are set out in statute or regulation or that are consistent with existing local policies, plans, or service criteria.
- Local governments also may need to explore other funding possibilities for their share of a jointly funded project
- finalize a comprehensive plan or growth policy
- revise subdivision regulations
- review proposed subdivisions
- approve a zoning district or zoning regulations
- obtain detailed information and make decisions about specific equipment, facilities or services
- obtain options, easements and rights-of-way
- hold elections to approve proposed site acquisitions or bond issues
- issue and review bids to procure materials and equipment
- oversee design, engineering and construction
- prepare job descriptions and hire and train personnel
- And provide notice and hold public meetings and public hearings, as required.

Some of these activities will happen before and some after the plan is approved. Each may affect when the local government is able to make a needed service or facility available to the mineral developer, the in-migrating population, and others affected by the mineral development.

Both in the planning process and in the plan itself, the developer and affected local governments should consider the lead-time local governments may require in order to make additional facilities and services available when they are needed. For example, the local government may need to apply for state or federal grants or loans to upgrade community facilities or services. They may also wish to consider whether, in some instances, temporary measures would provide an acceptable transition to the permanent provision of additional facilities or services, without diminishing the existing or needed level or quality of service.

In summary, the severity and cost of potential impacts depends largely on the relative size, the number and the needs of the in-migrating population; the rate and duration of in-migration; where in-migrants reside; and the existing ability of affected communities to meet the increased demand for housing, services and facilities. The severity and cost of actual impacts also depends on the willingness and ability of the developer, the affected local government units, and the communities to work together in preparing and implementing appropriate growth management and impact mitigation strategies, including the impact plan.

5. Financial or Other Assistance from the Developer *[90-6-307(1)(d), MCA; ARM 8.104.203(4)]*

The impact plan must identify:

the financial or other assistance the developer will give to local government units to meet the increased need for services. *[90-6-307(1)(d), MCA]*

In preparing the plan, the developer and affected local government units identify the increased capital and operating costs of needed services and facilities, specifying the "project year" or "impact year" in which the cost is expected to occur. They also estimate, by year and by local government fund, the revenues that are expected to result from the mineral development without any increase in property taxes or service fees. The difference between the increased mine-generated operating revenue and the mine-generated operating cost is the net operating cost. In the plan, the developer must commit to pay all increased capital and net operating costs resulting from the mineral development. *[90-6-307(1) and (2), MCA; ARM 8.104.203(4)]*

The developer and local governments may have to evaluate alternatives for providing and financing the needed facilities and services. If the capacity or condition of a facility or the level of a service is inadequate to meet existing needs, or to meet needs as projected

without the mine, the developer and affected local government unit may have to apportion fiscal responsibilities between them.

The plan identifies any non-financial assistance the developer will provide. For example, the developer might assume full or partial responsibility for upgrading and maintaining the county access road to the mine, conforming to applicable standards and requirements. Or, the developer might provide additional communications equipment and joint training opportunities for county emergency services personnel. Or, in order to contain costs by encouraging concentrated rather than sprawl development or to ensure the timely availability of employee housing or developed housing sites, the developer might develop a new subdivision in a location compatible with the local growth policy and planning and zoning requirements.

In some cases, developers have chosen to assist nonprofit organizations that provide quasi-governmental services, such as rural fire protection and emergency medical services. These are services which a local government unit could provide but which are, instead, provided by volunteer entities, often with some financial assistance from a local government unit. Assistance to quasi-governmental, nonprofit organizations has included shared emergency medical training opportunities, donation of equipment, grants, and mutual aid agreements. Whether provided directly or through an affected local government unit, such assistance helps the non-profit entity to upgrade its training and equipment, while preparing and compensating it for emergency services rendered on behalf of the developer or the in-migrating population. Impact payments to a nonprofit service provider are voluntary, but the developer may commit to them in the plan. Impact payments to the local government unit that assists a nonprofit entity financially may be required by the plan, if the local government unit expects to incur increased costs to enable the non-profit entity to provide additional services needed as a result of the mineral development.

6. Developer's Commitment to Pay All Increased Capital and Net Operating Costs and the Schedule of Payment [90-6-307(2), MCA; ARM 8.104.203(4)]

In the impact plan, the developer must commit itself:

to pay *all of the increased capital and net operating cost* to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule

within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid. [90-6-307(2), MCA; emphasis added.]

After identifying all capital, operating and net operating costs that will be incurred by local government units as a result of the development, the developer must commit in the plan to pay all capital and net operating costs. The plan must identify the purpose, amount, form, and timing of each impact payment. [90-6-307(1) and (2), MCA; ARM 8.104.203]

a. Purpose of Payment. The plan must identify the purpose for which each payment is to be made. The plan identifies both the service needed and the proposed method of providing the service. In doing this, the plan should allow some flexibility. For instance, the plan might identify the need to provide more frequent, year-round road maintenance, describing the level of maintenance expected. At the same time, the plan might project the increased cost of the additional road maintenance based on the acquisition and operation of one new piece of road equipment and on the increased operation, accelerated depreciation, and partial replacement cost of another piece of equipment. The plan will be more flexible and will intrude less on the authority and responsibility of the local governing body, if it specifies that the *purpose* of the impact payment is to enable the local government unit to provide the *needed level of road maintenance at the identified cost* and that, within that cost, the local government may achieve the identified level of maintenance by whatever method it finds appropriate.

Flexibility in the method of providing a service might allow a school to respond better to actual, as opposed to projected, needs, while fulfilling the purpose for which the impact payment is made. For example, given the projected number of immigrating students and their anticipated distribution by grade, the plan might propose that the school meet its instructional needs by hiring three additional teachers and two teacher's aides. Later, given revised projections, the actual number or distribution of incoming students among the grades, or the specific needs of individual students or classrooms, the school board might conclude that students' instructional needs would be better met by hiring two teachers and four aides or four teachers and no aides (assuming available classrooms). Even though the school board might select a different method of ensuring adequate classroom instructional services, it must remain committed to the quality or level of service to students anticipated in the plan, without exceeding the identified operating cost unless the plan is adjusted or amended. The amount of an impact payment can be changed

by a plan adjustment only if the plan provides for such adjustments and by an amendment only under the conditions specified by statute or in the plan itself.

The approach described above allows the local governing body to change the method by which it provides a service, but not to increase the payment to which the developer is committed or to decrease the level of service to which the local government is committed, except by means of an impact plan adjustment or amendment. Alternatively, the parties to the plan could provide that any substantial change in the method of providing a service would require either notification of the developer or an adjustment concurred in by the developer and the affected local governing body to confirm that the governing body is providing the level of service to which the plan is committed and for which the developer is paying.

As a matter of general policy, unless the plan indicates otherwise, the Board will usually assume that the basic *purpose* of the commitment between the developer and the local government is to enable the local government unit to provide the needed level or quality of service at the identified cost and that the local government unit has some reasonable latitude in revising the method by which it provides the agreed-upon level of service.

b. Amount of Payment. The plan must identify the amount of each impact payment. The amount must correspond to the increased capital or net operating cost that will be incurred during the fiscal year for which the payment is made. There are several ways of identifying costs and amounts of payment in the plan, including contingent payments, as discussed below.

The plan may specify a fixed cost and amount of payment; may provide for a conditional payment or payment of a conditional amount, contingent on circumstances that will trigger the payment or the amount; or, may specify a procedure for calculating the cost and amount of payment in response to actual circumstances. The following examples illustrate these alternatives:

- (1) The developer might commit to pay a fixed amount in prepaid property taxes to an affected elementary school district for net operating costs in the academic year when the mine begins construction; and/or
- (2) The plan might provide for a conditional payment, that is, a payment that will be made only if specific circumstances occur, such as: the developer will prepay a specified amount in property taxes to the

school district for additional net operating costs if more than 9 but fewer than 20 additional mine-related students enroll beyond the number that has been projected and provided for in the plan; and/or

- (3) In a small rural district significantly affected by fluctuations in student population, in addition to the identified, projected costs attributable to the maximum number of in-migrating students expected to be enrolled at any one time, the developer might also commit to pay, through tax prepayment or grant, actual operational costs arising from mine-related students transferring into or out of the district; and/or
- (4) The plan might specify the criteria and procedure by which the amount of payment will be calculated, such as that for the first year of enrollment for each mine-related student in excess of the number enrolled during the previous year, the developer will make a grant payment for each in-migrating student equal to the State's per student share of the district's revenue and, if requested, a property tax prepayment for each in-migrating student in an amount equal to the district's per student revenue from its mill levy.

In its payment schedule, the plan must identify the purpose, amount, form and timing of all specified payments. [90-6-307(2), MCA; ARM 8.104.203(3) and (4)] The schedule may also take note of potential contingent payments. An estimate of contingent tax prepayments is necessary for the financial guarantee. After the plan is approved the developer must provide a financial guarantee covering all of its tax prepayments. [90-6-309(3), MCA] For purposes of the financial guarantee, the plan must provide an estimated total of all contingent and specific tax prepayments. [90-6-307(1) and (2), 90-6-309(3), MCA; ARM 8.104.214] The financial guarantee is discussed below and in Chapters I, III and IV and in Appendix IX.

c. Form of Payment. The plan must specify the method or form of each impact payment. The developer may make impact payments to local government units in the form of property tax prepayments, facility impact bonds, grants and contributions, or other financing mechanisms; provided that the developer provides the necessary guarantees and that the increased capital and net operating costs are not shifted to the local taxpayer, either at present or over time. [90-6-301, 90-6-307, 90-6-309, 90-6-310, MCA; ARM 8.104.203(4), 8.104.211, 8.104.214, 8.104.215]

The form of payment needs to be appropriate to the way in which the service or facility is normally financed, consistent with the purposes and requirements of the Impact Act and other statutes governing local government finance, and, if possible, acceptable to both the developer and the affected local government unit.

Local governments raise property tax revenue by levying a certain number of mills against the taxable valuation of property within their taxing jurisdictions. Property tax revenue is typically used by counties, municipalities, school districts, and some special districts for general operating costs and for jurisdiction-wide services such as law enforcement, fire protection, library services, and road and bridge maintenance. When authorized by statute, additional property tax revenue may be raised from special assessments against taxable valuation to pay for capital costs. Special assessment revenue often is used to retire bonds.

By contrast, some local government services or facilities, such as water, sewer and solid waste disposal, may be financed from enterprise fees (user charges). In some cases, particularly within special improvement districts, certain services or facilities may be financed through special assessments that are based on factors other than taxable valuation. Some services and facilities may be financed in part from non-local revenues, such as the school foundation program, state shared revenues, or state or federal grants or loans.

The three forms of impact payment specifically authorized by the Hard-Rock Mining Impact Act are discussed in more detail below.

(1) Tax Prepayments. [90-6-307(2), 90-6-309, MCA] Through the impact plan, the mineral developer may prepay property taxes to meet the increased capital and net operating costs of services and facilities that are normally financed, at least in large part, from property tax revenues, provided that the amount prepaid can be credited back to the developer during the productive life of the mine without shifting the effect of the impact cost over time onto the non-developer taxpayer. [90-6-307(2), 90-6-309(5), MCA, ARM 8.104.203(4), 8.104.211, 8.104.215]

To shift the cost over time would be contrary to the purpose and requirements of the Impact Act. The Act requires the mineral developer to identify and pay *all* increased capital and net operating costs resulting from the development so that services and facilities needed as a result of the development will be provided and so that the non-developer local taxpayer

will not have to bear the burden of these increased costs, whether in the year the costs are incurred or at a later date. [90-6-301, 90-6-307(1) and (2), MCA]

Each year after the mine begins production, a local government unit that has received a tax prepayment is required to calculate and, if appropriate, provide a tax credit to the developer, according to the method of calculation, criteria or schedule specified in the impact plan. [90-6-309(4) and (5), MCA; ARM 8.104.203, 8.104.211, 8.104.215] Because of budgeting, accounting and auditing requirements and distinctions between taxing jurisdictions within a local government unit, tax credits must be calculated and provided separately for each affected fund of the local government unit. The affected fund is the local government fund which would ordinarily be used for the type of service or facility for which the prepayment was made, such as the general fund, road fund, or library fund.

Property tax credits reduce potential property tax revenue from the developer for the affected fund. Each fund may be subject to its own mill levy limit, just as the local government unit as a whole may be subject to an overall mill levy limit. (If the classification of the local government unit changes as a result of the increase in population or taxable valuation, some of its mill levy limits may be reduced, while some of its service requirements and expenses may increase.) The tax credit in any given year may not exceed the developer's tax obligation for that year. [90-6-307(1) and (2), 90-6-309(5), MCA; ARM 8.104.215]

In deciding whether to meet an impact cost through a tax prepayment, rather than a grant or facility impact bond, the developer and local government unit should ascertain how the service or facility is normally financed. If the service is usually financed, at least in large part, from property tax revenue, they should, using their proposed criteria and method for calculating tax credits, evaluate the feasibility of crediting the full amount during the productive life of the mine without shifting the impact cost over time to the non-developer taxpayer. If tax prepayments are relatively small, they may also want to evaluate the cost effectiveness of tax prepayment and crediting, taking into account what the tax crediting process entails for both, and to consider the cost to the developer and the benefit to the local government units of the required financial guarantee.

The Impact Act requires the developer to provide the Board with a financial guarantee covering all of its tax prepayment obligations. The guarantee must be through a third party financial institution and is typically accomplished through a letter of credit for the specified total. For purposes of the financial guarantee only, the plan must include an estimate of its conditional prepayment commitments. *[90-6-309(3), MCA; ARM 8.104.214]*

Financial guarantees are discussed further in Chapters I, III, and IV and Appendix IX.

In summary, tax prepayments should be used to meet impact costs only when tax credits can feasibly be given during the productive life of the mine without shifting the effect of the impact cost over time to the non-developer taxpayer. *[90-6-301, 90-6-307(1) and (2), 90-6-309(5), MCA; ARM 8.104.215]* Tax prepayments should also be used only when the tax crediting process is cost-effective for both the developer and the affected local government unit. The impact plan is to specify the criteria and method and, if applicable, the projected schedule by which affected local government units will calculate and provide tax credits. *[90-6-309(4) and (5), MCA; ARM 8.104.203, 8.104.215]* Tax credits are calculated and provided separately for each affected fund. A tax credit reduces the potential property tax revenue from the developer for the affected fund. In any given year a tax credit may not exceed the tax obligation of the developer. *[90-6-309(5), MCA]*

Tax crediting is discussed in Section 7 below. Tax prepayment and tax crediting procedures and criteria are also discussed in Chapters I and IV and in Appendix XII.

(2) Facility Impact Bonds. *[90-6-307(2) and 90-6-310, MCA]* An impact plan may provide for a facility impact bond to meet the cost of constructing, renovating, improving or acquiring a new local government facility needed as a result of the development. *[90-6-310(1), MCA]* "Facility" means a facility that is owned, operated, or maintained by a local government unit. *[90-6-302(3), MCA]*

If the impact plan provides for a facility impact bond, the governing body of the affected local government unit and the owners of the mineral development may enter into an agreement for the issuance of the bond. *[90-6-310(1), MCA]* Annually, the governing body of the local government unit must levy a special tax on the property of the mineral development to retire

the principal and interest of the bond. [90-6-310(2), MCA] The bond agreement must provide for a guarantee of payment from the owners of the mineral development to the local government unit. [90-6-310(2), MCA]

Through an interlocal agreement, two or more local government units may enter into a facility impact bond agreement with the developer. [90-6-310(7), MCA] This may make issuance of bonds more economical and allow bonding for relatively small capital expenditures for which separate issues would not otherwise be cost effective.

A facility impact bond is a debt against the taxable valuation of the mineral development and is not a liability of the local government jurisdiction as a whole. [90-6-310(2), MCA] The bond does not affect the debt limit of the local government unit. [90-6-310(3), MCA] Interest earned by the bondholders is not taxable by the State. [90-6-310(3), MCA]

If the governing body and the developer decide that the payment guarantee required for the facility impact bond should be executed through a third-party financial institution, they may wish to refer to Appendix IX, which includes samples of the financial guarantee a developer must provide the Board to ensure that its tax prepayment obligations are met. [90-6-309(3), 90-6-310(2), MCA; ARM 8.104.214]

(3) Other funds from the developer, i.e. grants or contributions. [90-6-307(1) and (2), MCA] Some services and facilities are financed through user or enterprise fees, rather than through property tax revenue, and some are financed through special assessments or other revenue sources. Grants may be the most appropriate means of meeting impact costs for services not typically financed from property tax revenues. Even for services financed through property taxes, grants may be preferable to tax prepayments if the net operating cost is so small that either the financial guarantee or the tax crediting process would be uneconomical. Similarly, grants may be preferable for relatively small capital costs for which tax prepayments or tax credits are not feasible and impact bonds would be uneconomical.

Grants may also be used to assist quasi-governmental, non-profit service entities, such as volunteer fire departments and emergency medical teams that provide services which might have been provided by local government units.

(4) Alternative financing mechanisms. [90-6-307(2), MCA] In evaluating the purpose, amount, form and timing of impact payments, the developer and local governing body may consider alternative ways of meeting increased capital and net operating costs, provided that the alternative mechanism ensures that the cost will be met in a timely manner and not shifted, at present or over time, to the non-developer taxpayer.

For example, in one instance, a developer and an affected local government unit negotiated an exchange of equivalent value between the capital and net operating costs of an enterprise service, that is, a service paid for by user fees rather than by taxes. The facility in question was already inadequate to meet the needs of the existing population and was in violation of state standards. With or without the mine, the facility needed to be upgraded and expanded. The projected increase in the system's capital costs to meet existing needs without the mine approximated the projected increase in net operating costs with the mine. Both the developer and the affected governing body were confident that when the new housing for in-migrants was in place, the additional residents would generate sufficient fee revenue to allow the system to meet its operating expenses without any increase in fees beyond what the local residents would have had to pay without the mine. In exchange for being absolved of responsibility for net operating costs in the interim, the developer paid the entire capital cost of upgrading and expanding the facility. Local residents paid no more than they would have without the mineral development and were spared the expense of the bond they would have had to issue, and the governing body and developer were spared the annual calculation and payment of net operating costs.

In summary, the use of tax prepayments, rather than grants or facility impact bonds, for increased capital costs would depend on the type of revenue ordinarily used for financing the capital costs, the magnitude of the capital costs, and the feasibility of crediting the full amount back to the developer from the affected fund during the productive life of the mine, without shifting the cost to the non-developer taxpayer. Property tax prepayments might be appropriate for the net operating costs of services that are usually financed from property tax revenue, but perhaps not for those local government services or facilities that are financed primarily or entirely from revenue sources other than property taxes. Net operating costs of enterprise services, such as water or sewer services, for example, would more appropriately be paid by grants. Grants would be particularly appropriate if the local government

could use the funds to leverage additional grant funds through state or federal programs. Even for services financed through property taxes, grants may be preferable to tax prepayments, if the net operating cost is so small that either the financial guarantee or the tax crediting process would be uneconomical.

d. Schedule of Payment. [90-6-307(1) and (2), MCA; ARM 8.104.203(3)] The plan must contain a schedule that specifies when the developer will make each impact payment. Each payment must enable the local government unit to meet its impact costs in a timely way. In establishing the payment schedule, the developer and affected local governments need to consider when a service or facility will be needed, what steps the local government must take in order to have the service or facility in place when needed, when each step should be initiated, how long it will take to complete, and what costs will be incurred along the way.

The timing of impact payments under an approved impact plan is determined by the plan itself and is not legally dependent on when the operating permit is issued, when the mine begins construction, or when production begins, except insofar as the approved plan or the Impact Act specifically ties these events to the timing of the payments. [90-6-301; 90-6-307(1), (2), (10), and (12); and 90-6-309(1), MCA] For example, the plan might conclude that certain local government services or facilities will need to be in place by the time the mine begins construction. Construction may begin any time after the permit is issued. [82-4-335(5), MCA] In order to have services or facilities available when they are needed, the local government unit may incur costs before the mine begins construction. Depending on the mine's schedule, this may mean incurring costs before the permit is issued. The plan may require the developer to pay impact costs necessary to the timely provision of services needed as a result of the mineral development, even though they are incurred before the permit is issued.

Although the plan may require the developer to make impact payments before the permit is issued, the plan may not require tax prepayments. Because of the tax prepayment language in *Section 90-6-309, MCA*, tax prepayments may not be required until the permit has been issued. However, the local government and the developer might choose to meet necessary pre-permit impact costs through another form of payment that could be converted to tax prepayments when the permit has been issued. For example, the developer could provide a no-interest loan for which no repayment is due until the permit is issued, at which time the loan would be converted to a tax prepayment.

The impact plan typically schedules payments in terms of "project years" or "impact years," as defined in the plan. To bring "project years" or "impact years" in line with local government fiscal years for budgeting purposes, the first "impact year" may exceed 12 months; that is, it may combine part of one fiscal year and all of the next.

Budgeting for impact payments should not pose a problem for local governments. The Impact Act authorizes the governing body to amend its budget by a majority vote to permit the receipt and expenditure of revenues received under an impact plan, the Impact Act or the Tax Base Sharing Act after the budget has been adopted. *[90-6-323, MCA]* Each local government unit establishes an impact fund for the receipt and expenditure of impact payments. *[90-6-307(10), MCA; ARM 8.104.211(2)]*

Some impact payments may depend on specified triggering events or circumstances. The payment schedule may identify conditional impact payment commitments separate from the identified payment commitments, noting that both the occurrence and the timing of these payments depends on the conditions specified in the plan. To ensure timeliness, the plan may provide that a conditional impact payment will be made within a specified time after the affected local government unit and developer confirm the triggering event or within a specified time after the affected local government unit requests the payment.

The impact payment schedule must include all identified capital and net operating costs resulting from the development and must specify an appropriate form of payment for each cost. *[90-6-307(1) and (2), MCA; ARM 8.104.203]* The timing of each payment must precede the expenditure by the local government unit, unless otherwise agreed upon.

Appendix IV contains two sample payment schedules.

In identifying potential impacts and calculating and providing for increased costs, the parties to the plan should consider the degree of certainty attributed to projections of timing, employment, in-migration, and increased service needs, costs and revenues. For instance, they should consider how delays in the project might affect the plan's assumptions, projections and commitments, including the cost, capacity and condition of services or facilities and the availability of projected non-development revenues, both local and non-local. If significant delays are possible and could adversely affect the accuracy or implementation of the plan, the plan might specify that a delay of more than a given length of time after the plan is approved and before the mine begins construction, or begins

production, will constitute a condition that allows any party to the plan to petition for its amendment. [90-6-311(1), MCA]

7. Tax Crediting. [90-6-309(4) and (5), MCA; ARM 8.10.215]

Through the impact plan, the mineral developer may prepay property taxes to meet the increased capital and net operating costs of services and facilities needed as a result of the mineral development, provided that these services and facilities are normally financed, at least in large part, from property tax revenues and that, as specified in the Impact Act and impact plan, some or all of the amount prepaid can be credited back to the developer during the productive life of the mine without shifting the impact cost over time to the non-developer taxpayer. [90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA; ARM 8.10.215]

Each year during its budget process, the governing body of a local government unit that has received a tax prepayment is required to calculate and, if appropriate, provide a tax credit to the developer. [90-6-309(4) and (5), MCA] Plans submitted prior to July 1, 1985 follow a statutory formula for calculating and providing tax credits. For these earlier plans the local government unit's tax crediting obligation terminates 10 years after the prepayment was made. Plans submitted after July 1, 1985 specify in the plan the criteria and method by which affected local government units will calculate and provide tax credits and may include a projected tax crediting schedule. [90-6-309(4) and (5), MCA]

Basic Tax Crediting Requirements. The calculation and provision of tax credits begins the year after the mine starts production and, for the later plans, is limited to the productive life of the mine or until the credit has been paid in full, whichever occurs first. The tax credit in any given year may not exceed the developer's tax obligation for that year. [90-6-307(1) and (2), 90-6-309(4) and (5), MCA; ARM 8.104.215]

Tax credits may not have the effect of shifting the impact cost over time to the non-developer taxpayer. The Impact Act requires the mineral developer to pay *all* increased capital and net operating costs resulting from the development, as identified in the plan, so that services and facilities needed as a result of the development will be provided and so that the non-developer local taxpayer will not have to bear the burden of these increased costs, whether in the year the costs are incurred or at a later date. To shift the cost over time would be contrary to the purpose and requirements of the Impact Act. [90-6-301, 90-6-307(1) and (2), MCA; ARM 8.104.215]

Tax Crediting by Fund. Because of budgeting, accounting and auditing requirements, fund distinctions, and multiple taxing jurisdictions within a local government unit, tax credits must be calculated and provided separately for each affected fund of the local government unit. A property tax credit reduces potential property tax revenue from the developer for the affected fund in the year when the credit is allowed. The affected fund is the local government fund which would ordinarily be used for the type of service or facility for which the prepayment was made, such as the general fund, road fund, or library fund. Each fund may be subject to its own mill levy limit, just as the local government unit as a whole may be subject to an overall mill levy limit.

As a result of the mineral development, the population or the taxable valuation, or both, may increase in the affected local government units. If the classification of a local government unit changes as a result of an increase in population or taxable valuation, some of its mill levy limits may be reduced, while some of its service level requirements and expenses may increase. This may affect the tax crediting capacity of the local government unit.

Property Tax Credits from Property Tax Revenue. Property tax credits are allowed to the developer only from potential property tax revenue. Tax prepayments cannot be used as impact payments for those local government services or facilities that are financed primarily from sources other than property tax revenues, such as enterprise fees, special assessments based on factors other than taxable valuation, or revenue sources other than property taxes. Without property tax revenue as the normal funding source for a service or facility, no property tax credit can be given.

Before deciding whether to use a tax prepayment to meet impact costs for services normally financed from property tax revenues, the developer and affected local government unit should determine whether the anticipated property tax revenue from the developer for the affected fund appears sufficient to enable the recipient local government unit to credit the prepaid amount during the productive life of the mine without shifting the impact cost to the non-developer taxpayer. For very small or isolated prepayments, they should also evaluate whether the tax crediting process will be cost-effective for both the developer and the affected local government unit.

Form of Payment Versus Full or Partial Tax Credits. In evaluating the potential for tax crediting for services financed largely from property tax revenue, the developer and affected local government units will reach one of three conclusions, depending on their expectations of future service needs, costs, taxable valuation, mill levies, mill levy limits, and revenues for the affected funds. They will conclude that, during the productive life of

the mine, from the developer's projected property tax revenue for *the affected fund* the affected local government will be able allow a full credit, a partial credit or no credit of the prepaid tax.

If it does not appear likely that a tax credit can be given, it would serve no purpose to use a tax prepayment to meet an impact cost. If it appears probable that a full tax credit could be allowed without shifting the impact cost over time to the non-developer taxpayer, using a tax prepayment to meet an impact cost would probably be appropriate, provided that the tax crediting procedure would be cost effective for the developer and the affected local government unit.

If it appears that only a partial crediting would be feasible during the productive life of the mine without shifting the impact cost over time to the non-developer taxpayer, then the developer and affected local government unit appear to have two options. They may either select another form of payment for the impact cost or acknowledge in the impact plan that only a partial crediting of the prepaid tax is expected to result from the plan's criteria and method for calculating and providing tax credits.

The Impact Act appears to allow for partial crediting of prepaid taxes. [90-6-309(4) and (5), MCA] The Act requires a local government unit that received a tax prepayment to **"provide for repayment of the prepaid property taxes in accordance with subsection (5)"** of 90-6-309, MCA. [90-6-309(4), MCA, *emphasis added.*] In turn, subsection (5) requires the local government unit that received a tax prepayment to **"provide for tax crediting as specified in the impact plan."** [90-6-309(5), MCA, *emphasis added.*] The subsections require the local government unit to "provide for" repayment or crediting of prepaid taxes "as specified in the impact plan." Neither subsection appears to require the local government unit to credit the full amount of the prepaid tax, unless that is what the plan specifies. In subsections (4) and (5) the language "provide for" and "as specified in the impact plan" seems to leave sufficient latitude that *in the plan* the developer and the affected local government unit might provide for *partial* crediting of prepaid taxes, if it appears that a full credit could not be given during the productive life of the mine without shifting the impact cost to the non-developer taxpayer.

If, in the plan, the developer and the affected local government unit identify prepaid taxes as the form of payment for an impact cost and provide for the calculation of tax credits according to criteria and methods which might not result in the full amount being credited to the developer during the life of the mine, this means that the local government unit will be fulfilling its tax crediting obligation if, annually throughout the productive life of the mine, it calculates and provides the credits *as specified in the impact plan*, whether or not the full

amount is eventually credited. At the end of the productive life of the mine, the uncredited balance of the prepayment will, in effect, convert to a grant. To avoid future misunderstanding, the plan should acknowledge this eventuality.

While partial tax crediting is not as desirable as full tax crediting for the developer, and should be used only when justified, it expands the possibilities for tax prepayments. Without the option of partial tax crediting, the parties to the plan limit their ability to use tax prepayments for impact costs to only those situations in which the local government unit's ability to provide a full tax credit from potential mineral development revenue for the affected fund appears assured.

The plan should identify the criteria and method for calculating tax credits; provide a projected tax crediting schedule, if possible; specify whether full or partial tax crediting is anticipated, if possible; and provide for the amendment of the criteria and method for calculating and providing tax credits, if appropriate. [90-6-309(4) and (5), 90-6-311(1), MCA]

Prepaid Taxes and Capital Costs As discussed, property tax prepayments are most frequently appropriate for *net operating* costs that are financed, at least in large part, from property tax revenue. By contrast, if an impact plan uses property tax prepayments to meet major *capital* costs, tax crediting may be difficult or impossible. Mill levy limits and the demands of operating budgets may restrict the ability of the local government unit to credit the prepaid tax. The operating fund from which the credit must be made may not generate sufficient revenue to offset large capital costs.

When a local government unit uses property tax revenue for major capital costs, it raises the revenue through a special assessment against the taxable valuation of property within its jurisdiction. Mills levied for a special assessment are separate from and in addition to the mills levied for normal operating expenses. The special assessment is not subject to the mill levy limit of the operating fund. However, a local governing body has no authority to impose a special assessment on the taxpaying property within its jurisdiction in order to provide a tax credit and it probably could not do so, in any case, without shifting the impact cost to the non-developer taxpayer.

For a fund that typically operates at or near its mill levy limit but still lacks sufficient revenue to meet service demands, the potential tax crediting problem is especially evident. The local government unit might be unable to credit taxes prepaid for a major expenditure from such a fund without seriously depleting its operating revenue and jeopardizing its ability to provide either its historic level of service or the level of service needed as a result

of the mineral development. For example, in some counties the road and bridge funds are near or at their legal mill levy limits, yet the county is unable to meet its road and bridge maintenance needs. The local governing body might have great difficulty in allowing a large tax credit from potential revenues for an already stressed fund. Even with the increase in taxable valuation resulting from the mineral development, if the plan required the developer to prepay a substantial amount of property tax for major road construction, the county, without seriously jeopardizing its provision of services, might never have the financial capacity from the road fund's limited operating revenues to provide a full tax credit for the capital expenditure.

For financing major capital projects, such as road or bridge construction, another form of impact payment, such as a facility impact bond, might be preferable to the prepayment of property taxes.

Tax Crediting Prior to July 1, 1985. An impact plan submitted prior to July 1, 1985 is subject to the provisions of statute that were in effect when the plan was submitted, unless the plan has been amended to provide otherwise. *[90-6-309, MCA]* The 1981 statute sets out a formula by which local government units calculate and provide tax credits. *[90-6-309(5), MCA, 1981]* The purpose of the formula is to identify the amount of tax credit, if any that can be allowed, given the total taxable valuation of the jurisdiction, after meeting current budget needs at a mill levy equal to the average mill levy for the three years preceding the development. *[90-6-309(5), MCA, 1981]* The principle embodied in the formula remains consistent with the purpose and impact payment requirements of the Impact Act, although the method of providing the tax credit has changed. *[90-6-301, 90-6-307(1) and (3), MCA]*

Under the original statute, tax crediting was accomplished by reducing the taxable valuation of the mineral development in the local government jurisdiction that was to provide the tax credit. The tax credit and consequent reduction in taxable valuation were calculated separately for each affected local government fund. When the amount of tax credit was determined, the developer's valuation would be reduced for the fund in question to allow the equivalent of a dollar for dollar tax credit. Recalculating taxable valuation by local government unit and by fund and applying mill levies to multiple valuations of the same property threatened to become excessively confusing and burdensome for the local governing bodies and the county assessor and treasurer. It was also confusing for the governing bodies trying to set their budgets and for the mineral developer trying to decipher its tax bill. Tax base sharing added to the number of local government units involved and to the potential complexity of the situation. Therefore, in 1985 the Legislature

amended the tax crediting statute to remove the requirement, and authority, for reducing taxable valuation to achieve tax crediting.

Tax Crediting After July 1, 1985. Beginning in 1985, a tax credit is provided only through a dollar for dollar reduction in the developer's tax bill. The reduction in the tax bill is calculated separately for each affected fund for which a credit is allowed.

The change in the method of providing tax credits did not change the basic purposes of the Impact Act or the principles underlying the calculation of appropriate tax credits. The Impact Act requires the developer to pay *all* increased capital and net operating costs resulting from the development so that these costs will not be borne by the non-developer local taxpayer. [90-6-307(2), MCA] Therefore, a plan would contradict both the purpose and the central requirement of the Act if it were to provide for tax crediting in a manner that would shift the tax burden, over time, from the developer to other local taxpayers. [90-6-301, 90-6-307(2), MCA]

To be consistent with the purposes and requirements of the Impact Act, a plan might apply principles and criteria such as the following to its provisions for tax crediting:

- a. The plan must identify and the mineral developer must commit to pay *all* increased capital and net operating costs resulting from the mineral development. [90-6-307(1) and (2), MCA] A tax credit must neither create nor add to capital or net operating costs resulting from the mineral development.
- b. A prepaid tax may be credited only from potential property tax revenues from the mineral developer to the affected fund, i.e., the fund that corresponds to the service for which the tax was prepaid. [ARM 8.104.215]
- c. Tax crediting must not shift capital or net operating costs resulting from the development over time to the non-developer local taxpayer. [90-6-301, 90-6-307(2), MCA; ARM 8.104.215]d. A tax credit may not exceed the tax obligation of the developer in any given year. [90-6-309(5), MCA; ARM 8.104.215]
- e. For plans submitted prior to July 1, 1985, tax crediting is limited to a period of 10 years after the tax was prepaid. For plans submitted on or after July 1, 1985, tax crediting is limited to the productive life of the mine. [90-6-309(5), MCA; ARM 8.104.215]

In summary, the Impact Act requires the mineral developer to commit to pay all increased capital and net operating costs resulting from the mineral development and identifies the prepayment of property taxes as one of several possible means by which impact costs might be met. *[Section 90-6-307(2), MCA]* *Section 90-6-309, MCA, adopted in 1981 and amended in 1985*, provides for the prepayment and crediting of property taxes. Property taxes that the developer prepays under an impact plan must later be credited to the developer by the recipient local government unit, subject to certain statutory and regulatory limitations. During its budget process each year following the start of production, the affected local governing body determines how much, if any, tax credit it is to allow the developer for each affected fund. Prior to July 1, 1985 tax credits are calculated and provided as specified by statute. As of July 1, 1985, the impact plan must specify the criteria and method for calculating and providing the tax credits. If appropriate, the plan may contain a projected schedule of tax credits. Appendix XII contains copies and discussions of both the original and the amended versions of the tax prepayment and tax crediting statutes. *[90-6-309, MCA]*

Tax base sharing and changes in mineral development taxable valuation may affect tax crediting. If either the taxable valuation of the mineral development or its allocation through tax base sharing differs significantly from what the impact plan projects, then mineral development revenues, net operating costs, needed tax prepayments and tax credits may also differ significantly from what the plan projects. *[90-6-404 and 405, MCA]* Tax base sharing is discussed below and in Chapters I and IV and Appendix XIII.

Under the statutory provision that allows an impact plan to specify conditions under which the plan may be amended, a plan may provide for the amendment of its tax prepayment and tax crediting provisions to ensure that tax credits do not shift impact costs over time to the non-developer taxpayer and that they remain consistent with the limitations and requirements of the Impact Act and with statutory and regulatory requirements affecting local government finance. *[90-6-311(1), MCA]*

Tax crediting is discussed further in Chapter IV and Appendix XII.

8. Tax Base Sharing *[90-6-401 through 90-6-405, MCA]*

A mine is always located in at least one county, one high school district, and one elementary school district, each of which applies its mill levy to the full taxable valuation of the mine. Ordinarily, only the local government units within which a mine is located can tax the property of the mineral development. However, a mineral development may cause an

increase in demand for services and an increase in costs in counties, municipalities and school districts in which the mine is not located. To enable these local government units to meet increased and ongoing costs resulting from the mine, the Legislature enacted the Property Tax Base Sharing Act in 1983, as companion legislation to the Hard-Rock Mining Impact Act.

Mineral Development Taxable Valuation. Tax base sharing involves only the increase in taxable valuation of the mineral development which occurs after the operating permit is issued. [90-6-402(8), 90-6-403, 90-6-404, MCA] By definition, the "mineral development" encompasses the construction and operation of the mine and associated milling facility by the developer, its contractors and subcontractors. [90-6-302(4), 90-6-402(4), MCA] The taxable valuation of the mineral development includes the gross proceeds of the mine and all taxable real and personal property at the mine and mill, whether owned by the developer or by contractors or subcontractors at the site. [90-6-302(4), 90-6-402(4) and (8), MCA]

Jurisdictional Revenue Disparity and Three Categories of Affected Local Government Units. Tax base sharing occurs only when an approved impact plan identifies a "jurisdictional revenue disparity," as discussed below. [90-6-402(3) and 403, MCA] Under tax base sharing the DOR allocates the increased taxable valuation of the mineral development separately within each of three categories of affected local government units: counties and municipalities, high school districts, and elementary school districts. Tax base sharing does not affect special districts or statewide mill levies. [90-6-402(5), 90-6-403, 90-6-404, MCA] Jurisdictions that are not subject to tax base sharing continue to tax the development as usual. [90-6-403, MCA]

If an approved impact plan indicates that property tax revenues resulting from the mineral development will be "inequitably distributed among affected local government units," this constitutes a "jurisdictional revenue disparity." [90-6-402(3), 90-6-403, MCA] If a plan identifies a jurisdictional revenue disparity in any of the three local government categories, tax base sharing must occur among all affected local government units within that category. Tax base sharing may apply to one local government category but not to the others. For example, tax base sharing may apply to elementary school districts but not to high school districts.

Typically, a jurisdictional revenue disparity exists when increased costs resulting from the development will occur in one or more local government units in which the mine is *not* located. A disparity could also exist if a mineral development overlapped two local government units within the same category, such as two high school districts, and if the

development would result in impact costs in excess of impact revenues in one of those units, while revenues would exceed costs in the other unit.

Statutory Allocation Formula or Allocation as Specified in the Plan. The Tax Base Sharing Act contains a statutory allocation formula, based on the place of residence of mineral development employees and their school-age children, as verified in an annual survey conducted by the developer. [90-6-404(2), (3), (4) and 90-6-405, MCA] If the initial allocation occurs before the survey is conducted, it is based on employees' place of residence and students' district of enrollment, as projected by the plan. [90-6-405(2), MCA] The formula includes all employees of the mineral development, both in-migrating and local. The formula allocates taxable valuation in proportion to the number of employees (for cities and counties) or students (for school districts) residing in each affected local government unit within the affected category. [90-6-404(2), (3), (4) and 90-6-405, MCA] The resulting allocation of taxable valuation may or may not correspond to the increased capital and operating costs resulting from the mineral development.

In 1991, the Legislature approved two significant amendments to the Tax Base Sharing Act. First, it reserved 20 percent of the mine's gross proceeds taxable valuation to the local government units in which the ore deposit is located. [90-6-404(1), MCA] Second, it authorized the impact plan to modify the statutory allocation formula, "if the modification is needed to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development." [90-6-404(5), MCA] This amendment allows a closer adherence to the purpose of the Act, which is "so that property tax revenues [resulting from the mineral development] will be equitably distributed among affected local government units." [90-6-401, MCA]

Plan to Consider Effects of Tax Base Sharing. Tax base sharing provides ongoing revenues for local governments with ongoing needs and costs resulting from the mine. In terms of front-end costs in local government units where the mine is not located, tax base sharing also creates the opportunity for the developer to meet some increased costs through property taxes or property tax prepayments, rather than grants. If the plan provides for tax prepayments as a result of anticipated tax base sharing, it must also provide for tax crediting. [90-6-307(2), 90-6-309(5), MCA]

Tax base sharing does not change the taxable valuation of the mineral development but will decrease the amount of mineral development taxable valuation available to jurisdictions where the mine *is* located, in order to provide additional valuation in jurisdictions where the mine *is not* located. Tax base sharing may affect the amount of

property tax actually paid by the mineral development, because of differences in mill levies among the jurisdictions.

Tax base sharing will not affect the capital or operating costs resulting from the development, but by affecting potential property tax revenues, tax base sharing may increase or decrease net operating costs, which the developer must, in the impact plan, identify and commit to pay. *[90-6-307(1) and (2), MCA]* Therefore, the plan must anticipate the effect of tax base sharing.

Because over time tax base sharing allocations may differ from what the plan projects, the plan might provide for the amendment of provisions that are dependent on its projections of the allocation of the mineral development taxable valuation and the resulting revenues, net operating costs, and tax credits. *[90-6-307(1) and (2), 90-6-309(4) and (5), 90-6-311, 90-6-404(5), and 90-6-405, MCA]*

Tax base sharing is also discussed in Chapters I and IV. The requirements and procedures for implementing tax base sharing are discussed in more detail in Appendix XIII.

9. Definitions and Key Events

The Impact Act and the Tax Base Sharing Act each defines many of the terms it employs. When the same term is used in both Acts, the same definition usually applies, but not always. In a few cases, definitions of terms under the Tax Base Sharing Act differ from definitions of similar terms for impact plan purposes, reflecting the different functions of the two Acts. *[90-6-302, 90-6-402, MCA]* At times, the plan may need to clarify its use of terms common to both Acts according to the context in which the term is used.

Several phrases used, but not defined, in the Impact Act need to be defined in the impact plan in a manner consistent with common usage, the Act, and the specific requirements and expectations of the individual plan:

- a. **"the estimated number of persons coming into the impacted area as a result of the development"** *[90-6-307(1)(b), MCA]*

The developer and affected local government units need to define "the estimated number of persons coming into the impacted area as a result of the development" before they can project the expected number of in-migrants, where they might live, or what impacts they might cause.

The Board has defined "impacted area" as "the jurisdictional area or areas of the affected local government units identified in an impact plan or in an amendment to an impact plan." [ARM 8.104.203A]

Affected local government units provide services to those persons who currently reside within their jurisdictions and to the people who move into the area as a result of the mineral development. People may come into the area in expectation of work at the mine, because of other jobs created or vacated locally as a result of the mine, or because they are members of the household of an in-migrating job seeker or wage earner. Both the impact plan and the project's environmental impact statement will, in effect, define and project the in-migrating population. If their definitions differ significantly, then projections of in-migration and impacts resulting from in-migration may also differ significantly. While each document appropriately represents a separate process, it may be useful to those preparing an impact plan or an EIS to compare the definitions, assumptions, methodologies, and projections in the two documents.

Plans often define an "in-migrating mineral development employee," in part, in terms of the length of time the in-migrating person resides in the area before applying for or obtaining employment in the construction or operation of the mine or its associated facilities. The length of residency used in the definition usually reflects when people are expected to move into the area in search of mine-related employment and may extend back far enough, or be otherwise worded, so as to include in-migrating exploration personnel who stay on to work in the construction or operation of the mine.

Depending on the plan's definition of people moving into the area as a result of the mineral development, an "in-migrating mineral development student" may differ from an "in-migrating mine-related student." The former usually implies a student who is the son, daughter, or ward of a mineral development employee. [90-6-402(7), MCA] The latter might encompass sons, daughters, wards, or in-migrating members of the household of any person who has moved into the area as a result of the mine, including in-migrants who are mine employees, former employees who were let go but have remained in the area, persons filling other jobs created or vacated as a result of the mine, and, if the plan includes them in its definition, persons who have moved into the area in expectation of employment resulting from the mine. For purposes of identifying impacts to county social service programs, one plan limits the latter group to people who have actually, but unsuccessfully, applied for work at the mine.

Expectations of how in-migration should be defined, when in-migration will begin, and how many people will in-migrate, and where in-migrants might live may be influenced by factors such as:

- the timing and level of employment associated with the mine's exploration, construction and operation
- the number and skills of currently unemployed or underemployed persons living within daily or work-week commuting distance of the mine and mill
- the comparative cost-of-living and availability of housing within commuting distance
- where current residents obtain both governmental and non-governmental services and the current and anticipated demand for such services
- the status of the economy and of employment opportunities elsewhere in the region
- the efforts of the developer and local governments to discourage the premature, belated or excessive in-migration of people who are looking for jobs that are not available
- the efforts of the developer and local governments to prepare for anticipated in-migrants, including, if needed and appropriate, the developer's provision of, or assistance with, worker housing or housing sites.

Because construction workers, especially, may come into the impact area for the term of their particular contract at the mine or mill, the plan may want to clarify that for impact plan purposes, the word "resides" in contexts such as "resides in the impact area" or "resides in an affected local government unit" does not mean "establishes legal residence." This understanding of the word "resides" is consistent with the language in the statutory requirement that the plan identify "the estimated number of persons *coming into* the impacted area as a result of the mineral development." [90-6-307(1)(b), MCA; *emphasis added.*]

b. **"Start of Production"** [90-6-309(4), MCA]

If the plan requires the prepayment of property taxes, it must define "start of production" for purposes of calculating and providing tax credits.

c. **"Commercial Production"** [90-6-311(1)(b), MCA]

Each plan must define the commencement of "commercial production" for purposes of establishing a timeframe within which an impact plan amendment may be initiated by a single party to the plan. One plan defines the beginning of commercial production as the date the developer first ships mineral concentrate from its mill for further processing. Another plan defines the beginning of commercial production in terms of a percentage of full production as projected in its operating plan.

The plan should also define terms that are critical to or may be used in a way unique to the plan itself, such as "impact year," "project year," or "impact period." For example, to facilitate implementation of the plan, "impact year one" may be defined as a period longer than twelve months, starting a specified number of months before the mine expects to begin construction and extending through the first full fiscal year after the mine begins construction.

Appendix II contains additional discussion and examples of both statutory and impact plan definitions.

10. Notification of Key Dates or Events [ARM 8.104.203]

In the plan, the developer must commit to notify the Board and the affected local government units within 30 days of the "start of production" for tax crediting purposes and within 30 days of the beginning of "commercial production" for impact plan amendment purposes. [ARM 8.104.203] The plan itself may identify other events or dates that will require notification. For example, in its monitoring and amendment provisions a plan might require that the developer or the affected local government unit notify the Board and other affected parties within a certain length of time after an event or circumstance occurs that allows the plan to be adjusted or amended, as provided by the plan or by statute.

If the parties to a plan know that the plan may be reviewed and approved considerably in advance of when the mine will begin construction, then in the plan they might require that the developer will notify the Board and the affected local government units by a specified length of time prior to the commencement of construction. The timing of the notice should be sufficient to allow the developer and the affected local government units to review the plan informally together before construction begins, to be sure that the plan's provisions are clear to those who will be implementing it (the persons implementing the plan may not be the same as those who originally prepared or reviewed it); to consider whether the provisions of the plan remain acceptable to all parties; and to amend the plan, if

necessary. The notice should allow sufficient time for local government units to be able to prepare the increased services and facilities they will need to provide when the mine begins construction.

11. Providing for Plan Adjustments and Amendments: Certainty and Flexibility in an Impact Plan

An impact plan may need to be changed after it has been approved. What the plan assumes, projects, or anticipates may or may not be what actually happens; its commitments may or may not be what is needed to address impacts resulting from the mineral development. Recognizing that an impact plan is based on data, assumptions, circumstances and projections that might change or prove to be inaccurate, the Legislature has provided a method for amending an approved impact plan under specific conditions, including conditions specified in the plan itself. [90-6-311, MCA] An approved impact plan is binding and may only be altered under the amendment provisions of the Impact Act. [90-6-307(6), MCA]

While the formal amendment procedure protects all parties to the plan, it also imposes constraints on their flexibility to respond in a timely manner to changing circumstances. A formal amendment, for example, requires a 60-day review period, which could delay implementation of needed changes to the plan. [90-6-311(3), MCA] The Board recognizes that an impact plan needs to achieve a balance between certainty and flexibility and that the parties to the approved plan need to be able to respond to changing circumstances in a timely manner. After reviewing the Act with this concern in mind, the Board has concluded that under the Impact Act the plan itself can create some latitude for change by building in provisions for limited adjustments under defined circumstances. Essentially, *an adjustment is a specific change contemplated by the plan itself*. An adjustment is an alternative that is built into the plan and that is, in effect, agreed to in advance by the parties to the approved plan, provided that the triggering event or circumstance contemplated by the plan occurs.

*An **adjustment** is an alternative action that occurs within the scope and provisions of the approved plan, while an **amendment** is an alteration to the approved plan.*

It is important for those who are preparing an impact plan to look ahead to possible circumstances that might result in a need to revise the approved plan.

- Development of the mining project may be delayed or accelerated.
- The number of mine employees, new mine-related students, or people moving into the area because of the mine may be greater or fewer than projected.

- In-migrants may settle into different residency patterns and may have different service needs than anticipated.
- At the time the impacts occur, service and facility capacities and impact costs may be higher or lower than anticipated.
- The taxable valuation of the mineral development may be higher or lower than anticipated.
- Under tax base sharing the amount of mineral development taxable valuation allocated to a given government unit may be greater or less than anticipated.
- Following an increase in population or taxable valuation resulting from the mineral development, the classification of an affected local government unit may change, resulting in different service requirements, elected official compensation, or mill levy limits.
- Changes in minerals prices or mine economics or the discovery of additional reserves may precipitate changes in the mining operation resulting in substantially fewer or more employees.
- State and federal service and facility standards, regulations, procedures or funding options for local governments may change in ways that affect the provision or cost of local government services and, consequently, affect the impact plan.

Those who are preparing and those who will be implementing an impact plan need to be prepared to deal with changing circumstances after the plan is approved. They need to understand the statutory criteria and requirements for amending the plan, the potential and limitations for adjusting an approved plan, and *the role the plan itself plays in future amendments or adjustments*.

Amendments. [90-6-311, MCA] Under specific conditions, the mineral developer or the governing body of the affected county, or both, may petition the Board to amend an approved impact plan.

- a. Under the following circumstances the mineral developer *or* the governing body of the affected county may petition the Board to amend an approved impact plan if:
 - (1) *the impact plan provides for its own amendment under definite conditions specified in the plan itself [90-6-311(1), MCA, first sentence]; or*
 - (2) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-

6-302(4), over or under the employment levels contemplated by the approved impact plan [90-6-311(1) (a), MCA] ; or

(3) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and two years have not yet elapsed since the date the facility began commercial production [90-6-311(1) (b), MCA]; and

b. The county *and* the mineral developer may join in a petition to amend the impact plan *at any time*. [90-6-311(1)c), MCA]

In the amendment process the governing body of the affected county serves as formal petitioner for all affected local government units within the county, acting at their request or on its own behalf. [90-6-311(1), MCA; ARM 8.104.217]

The specific conditions for amendment set out in *Subsections 90-6-311(1)(a) through (c), MCA*, may not be sufficient or appropriate to a particular service, facility, local government unit, mining project, or impact plan. Therefore, in its first sentence *Section 90-6-311(1), MCA*, also authorizes the plan to provide for its own amendment "under definite conditions specified in the plan." If the conditions specified in the plan occur, then either the developer or the governing body of the county may petition the Board to amend the plan. *This authority for the plan to provide for its own amendment may be one of the most critical provisions of the Impact Act.*

By identifying specific conditions under which an amendment may be needed, the plan is able to offer more opportunity for refocusing mitigation measures than would have been possible under the statutory amendment provisions alone. The ability of the plan to provide for its own amendment can help developers and local governments to deal with uncertainty and conflicting views about what might happen, to anticipate potential changes in needs or circumstances, and to be responsive both to services that are sensitive to minor population fluctuations and to services that can accommodate some increased demand. Through the plan's provisions for its own amendment, for instance, they could prepare for the possibility that, if the mine were to amend its operating permit in the future, specific services or facilities might be affected by increases or decreases in mine employment of fewer than the 75 persons that trigger the statutory amendment provisions. [90-6-311(1), MCA]

The plan may identify conditions under which the entire plan may be amended or conditions under which only certain provisions of the plan are subject to amendment. The

plan might provide for the potential amendment of the amounts, timing or form of impact payments; the circumstances under which payments will be made; the provisions for tax base sharing or tax crediting; or even the plan's own provisions for adjustment or amendment.

The plan may limit the scope or content of the amendments it allows under the conditions it specifies. For example, depending on its purpose and language, a plan might authorize amendment of all provisions pertaining to school facilities, services, costs, revenues and payments resulting from the mineral development, or it might limit the potential amendment to the incremental increase in operating costs resulting from a net increase in in-migrating students. In either case, the authorized amendment would address only impacts to the school and not impacts to other local government units or services.

Following are examples of provisions for limited amendments:

- (1) If the number of in-migrating mine-related students enrolled in the elementary school district exceeds the number projected by more than 15 but fewer than 30, or if more than 8 in-migrating mine-related students enroll in any grade, then the plan may be amended to meet the additional increase in net operating costs.
- (2) If the number of mine-related students enrolled in the elementary school district exceeds the number projected by more than 29 but fewer than 45, or if more than 10 enroll in a single grade, the plan may be amended to compensate the district for the resulting increase in capital costs and the additional increase in net operating costs.
- (3) If the number of mine-related students enrolled in the elementary school district exceeds the number projected by 45 or more within five years after the mine begins construction or three years after the mine begins commercial production, the plan may be re-evaluated and amended as necessary to meet the increased service and facility needs and costs resulting to the school district from the mineral development.
- (4) If the number of mine-related students enrolled in the elementary school district exceeds the number projected by 45 or more at any time after the mine begins construction and if the taxable valuation of the mineral development has not increased sufficiently to enable the district to meet the

educational needs of the additional mine-related students at the service level contemplated by the plan without increasing its mill levy, the plan may be re-evaluated and amended as necessary to meet the increased service and facility needs and costs resulting to the school district from the mineral development.

- (5) If the dollar amount of mineral development taxable valuation available to the district varies by 15 percent or more from what is projected by the plan for any given year, the impact payment and tax crediting provisions of the plan may be amended.

A plan provides for its own amendment in order to supplement the statutory circumstances under which an amendment may occur. In each of the situations described above, the plan not only authorizes its own amendment under specified conditions, but to some extent the plan also defines the scope and content of the allowable amendment. A plan may limit the scope or content of an amendment *only* if the amendment is authorized solely under the conditions specified in the plan itself. The plan cannot impose any limitation on the scope or content of amendments authorized under conditions specified by statute.

Chapters I and IV discuss the procedural and substantive requirements for implementing and amending an approved plan. All petitions to amend a plan must explain the need for the amendment and must describe the proposed corrective action. Appendix XIV contains a sample format for a petition to amend an impact plan. Appendix V illustrates provisions for monitoring a plan and illustrates several specific conditions under which a plan might provide for its own amendment. Persons preparing plans should become familiar with the statutory and regulatory requirements for reviewing, implementing and amending plans. [90-6-311, MCA; ARM 8.104.217]

In addition to providing for their own amendment, impact plans may try to achieve a balance between certainty and flexibility by providing for specific adjustments.

Adjustments. The Impact Act allows an approved plan to be changed only under the amendment provisions of the Impact Act. [90-6-307(6), MCA] However, in anticipation of the need for flexibility, the impact plan may provide for specific adjustments that may be made under defined circumstances, as specified in the plan. Essentially, *an adjustment is a specific change contemplated by the plan itself.* An adjustment is *an alternative action that occurs within the scope and provisions of the approved plan.* By providing for adjustments, the plan creates its own flexibility within defined limits. The conditions and scope of the adjustment are built into the plan itself, which means they are agreed to in

advance by the parties to the approved plan, provided that the triggering event or circumstance contemplated by the plan occurs. An adjustment does not change the plan. Instead, it is the process of selecting and implementing specific provisions of the plan under the conditions set forth in the plan itself.

A typical approach to adjustments is through "if...then" provisions that are similar to, but more specific than, those used above to illustrate the plan's conditions for amendment. To authorize an adjustment, a plan might provide that if a specific circumstance occurs, then a specific commitment will take effect, a specific change will be authorized, or a specific method of calculating increased costs will be triggered. This approach allows the developer and local government units to provide for a wider range of possible circumstances. In ways that are contemplated by the plan itself, an adjustment changes the commitment or commitments that would otherwise be in effect, without the necessity for formal amendment.

By identifying the specific responsibility and commitment of the developer under alternative potential scenarios, a plan may provide for adjustments that will correspond to actual, rather than projected, circumstances. For example, the plan might contain alternative, but specific, provisions for each of several ranges of potential enrollment in the elementary school:

- (1) if 1 to 20 in-migrating students enroll, then the *need and cost will be* (as specified)... and the developer's commitment will be (as specified)...
- (2) if 21 to 35 net in-migrating students enroll, then the *additional need and cost will be* (as specified)... and the developer's additional commitment will be (as specified);
- (3) if 36 to 45 net in-migrating students enroll, then the *total need and cost will be calculated* (as specified)... and the developer's total commitment will be (as determined by the calculation)....

An adjustment, rather than a formal amendment, is sufficient to implement "if...then" provisions and commitments, provided that both the conditions and the resulting commitment are specified. Because the adjustment involves changing the plan in some way specifically provided for in the plan itself, the potential change is essentially agreed to in advance by the mineral developer and the affected local government unit. When a plan is adjusted in this manner, *the developer and the local government must confirm the adjustment in writing to the Board*. This written confirmation is necessary because both

the parties to the plan and the Board need to know at all times what commitments are in effect.

In a variation on the use of adjustments, one plan provides that the developer and the affected local governing body may adjust the plan by shifting tax prepayments from one year to another or by increasing, but not decreasing, the amount of tax prepayments. Both parties must concur in the change. Under that plan, the changes in tax prepayments can have only limited effect on future tax crediting, which is carried out according to the original statutory formula for calculating and providing tax credits and uses a procedure that protects the future budget needs of the local government unit. Under this procedure, the affected local government must allow the credit if, given the total taxable valuation of its taxing jurisdiction, it could otherwise meet its budget needs at less than its historic average levy for the three years prior to the commencement of mining. The tax crediting obligation is limited to the 10 years following the tax prepayment. The current tax crediting statute requires the plan to provide for tax crediting and extends tax crediting to the productive life of the mine. Under the current statute, if a potential adjustment will affect tax prepayments, the plan should also determine how the change will affect tax crediting.

The same impact plan also provides that if prepaid taxes are not fully expended or committed in the year the prepayment is received, the amount remaining in the impact fund at the end of the fiscal year, along with any interest earned on the impact fund, will be carried over to the next fiscal year and will reduce the developer's tax prepayment obligation for that fiscal year. This carryover provision is an automatic adjustment requiring only that the affected local government unit notify the developer and the Board.

Adjustments or Amendments. In some circumstances, a plan might provide that a change could be made by either an adjustment or an amendment, whichever is appropriate. For example, the plan could provide that if the taxable valuation of the mineral development varies by more than 15 percent from the amount projected in the plan for any fiscal year:

- a. the plan may be *adjusted* so that the tax prepayments will meet actual increased net operating costs, based on the operating costs identified in the plan, or so that the tax crediting provisions reflect the change in valuation, or both; or
- b. the plan may be *amended* to recalculate net operating costs, based on the increase in operating costs identified in the plan; to change the amount or form of impact payment; or to change the applicable tax crediting provisions.

In this way, the developer and the affected local government unit might adjust the plan to ensure that, based on the already identified operating costs, the net operating costs are paid and the tax crediting provisions are changed, as needed. However, if the fluctuation in taxable valuation is part of a more complex or extensive change in circumstances, either the developer and the affected local government unit, or both, could petition to amend the plan to change its impact payment and tax crediting provisions.

Changes in *procedures* required by an impact plan may be accomplished by an adjustment or may require an amendment, depending on the circumstances. A proposed procedural change will be reviewed by the Board, or by its chairman and staff, to evaluate the scope of the change and its potential for adversely affecting the interests of any party to, or beneficiary of, the plan. If a proposed procedural change would not have a potential adverse effect, it will probably be treated as an adjustment. If a procedural change might have an adverse effect, or might have broader policy implications, an amendment would probably be required.

A formal *amendment* is required to enable a local government *to use an impact payment for any purpose or category of service other than as provided in the plan*. An amendment is also required *to change a commitment by the developer*, whether the change represents an increase or decrease in assistance, unless the plan itself has provided for the specific change or type of change.

An amendment, rather than an adjustment, is usually required when the "if...then" provisions merely encompass the scope of a potential change, as illustrated in the discussion of plan amendments. Unless the plan specifically provides otherwise, a formal petition to amend the plan is necessary to define changes made under general commitments-in-principle, to change specific commitments by the developer, or to change the general purpose for which a local government will use an impact payment.

Amendments may be needed if tax base sharing does not result in the allocation of mineral development taxable valuation that is anticipated by the plan. Allocations made under the statutory tax base sharing formula are revised annually in response to the developer's annual employee survey. If the parties to the plan are concerned about the effects of significant unanticipated changes in the allocation of mineral development taxable valuation over time, the plan can provide for the adjustment or amendment of commitments that are affected by the allocation of taxable valuation. For example, the allocation of taxable valuation might affect calculations of net operating costs and the assumptions on which tax prepayment and tax crediting are based. [90-6-307(2), 90-6-

309(5), MCA; ARM 8.104.215] The plan may provide for the amendment of the tax base sharing formula, whether that would mean modifying the statutory formula or changing the formula contained in the plan itself. [90-6-311(1), 90-6-404(5), MCA]

Monitoring. The statutory conditions for amending an impact plan and the use of "if...then" provisions for amending or adjusting a plan both presuppose that the developer and the affected local government units will engage in some degree of monitoring of the development and its impacts on local government services, facilities, costs and revenues. For instance, if provisions of the plan are based on alternative ranges of enrollment of mine-related students, the plan should also provide that the developer and school district will devise and implement a procedure for monitoring the number of mine-related students.

Monitoring and flexibility appear to be of particular importance:

- (1) when there is a high degree of uncertainty about the assumptions and projections on which the plan is based, such as projections of timing, immigration, population distribution, costs and mineral development taxable valuation;
- (2) when there is a reasonable likelihood that over time the developer may amend its operating plan or permit in ways that could affect local government services, facilities, costs, or revenues;
- (3) when the affected local government unit is relatively small in size or the affected service or facility is near capacity and could be significantly impacted by small changes in the numbers or demographic characteristics projected by plan; and
- (4) when the plan projects a high level of impact, a long impact period, or long-term commitments by the developer.

For whatever reason, the plan's original projections and commitments may not correspond to subsequent, revised projections, to actual needs for services and facilities resulting from the mineral development, or to the identifiable capital, operating and net operating costs. In order to serve its purpose, the plan must ensure that local governments are able to provide the services and facilities their communities need as a result of the mineral development. [90-6-301, 90-6-307(1) and (2), MCA] The developer and affected local government units need to be able to change the impact plan to respond to actual needs and circumstances. The developer and the affected local government units will be able to

address changing circumstances, if they provide adequately in the plan itself for monitoring, adjusting and amending the approved plan.

The plan must also ensure that the non-developer taxpayer is not burdened with increased costs resulting from the development. [90-6-301, 90-6-307(1) and (2), MCA] Both the community and the developer benefit when their respective resources are used appropriately and to good effect. Misallocation of their resources is costly in both financial and human terms.

Persons with experience in mitigating impacts from natural resource development advise that monitoring should be kept as simple as is consistent with the information needed to effect appropriate changes to the plan, or, conversely, to verify its adequacy. They find that existing reporting requirements, both for the developer and for local governments, are often sufficient to provide most of the needed data without having to duplicate efforts. The key, they suggest, is to identify in advance what information is necessary; who will provide, assemble, and analyze it; and how and by whom recommendations or decisions will be made based on the results. A commitment to monitoring should be included in the impact plan.

In the plan mineral developers and local government units seek a balance between certainty and flexibility. The certainty inherent in a developer's commitment to provide a specific amount or type of assistance for a specific local government service may be combined with the flexibility to adjust or amend the plan in response to defined circumstances or within defined limits, if the change is needed. Provisions for monitoring, amending and adjusting the plan help to ensure that the developer's assistance continues to correspond to the local government's legitimate mine-related needs, whether these needs increase, decrease, or change in character over time.

12. Payment Route. [90-6-307(10), MCA; ARM 8.104.211]

The plan is to indicate whether the developer will make impact payments through the Board's impact pass-through account or directly to the county treasurer. In either case, the parties must provide similar documentation to the Board, and the county treasurer must credit each payment to the impact fund of the appropriate jurisdiction for use as provided by the plan. [90-6-307(10), MCA; ARM 8.104.211] Payment through the Board's pass-through account involves an extra step and may take five to seven days longer, but the procedure has helped to identify and forestall potential problems, particularly those arising from a complex plan, a prolonged impact period, or a turnover among the local

government or mineral development personnel who are responsible for implementing the plan.

Because of the typically short turnaround time, interest does not usually accrue on impact payments made through the Board's pass-through account. However, if the parties to the plan anticipate leaving money in the account for any length of time, the plan should specify the disposition of any interest that might accrue. Unless the plan provides for allocation of the interest, State law requires that interest be credited to the State's general fund.

Similarly, if a local government unit may be holding payments in its impact fund for any length of time, the plan should specify what disposition is to be made of the accrued interest. The plan should also specify what becomes of any unexpended or uncommitted balance remaining at the end of a fiscal year. For example, the plan may provide that any unexpended balance may be carried forward to the next fiscal year, if it is to be used for the purpose for which the payment was made (same amount, same purpose, different year); or, the plan may provide that the interest and any unexpended and uncommitted balance will be used to reduce the developer's financial obligation in the next fiscal year. Grants should be carried forward only as grants and tax prepayments as tax prepayments, unless the plan specifically provides otherwise and the change is documented to the Board by the developer and the governing body.

Chapter IV discusses the implementation of an impact plan, including the alternative procedures for making impact payments.

D. FORMAT AND CONTENT OF AN IMPACT PLAN [ARM 8.104.203]

The Hard-Rock Mining Impact Board has adopted the following rule concerning the format and content of an impact plan:

1. The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts and how they relate to one another.
2. The format of the plan must contain the following elements:
 - a. the name, mailing address, email address, and telephone number of the developer's contact person;
 - b. a brief summary of the impact plan, which includes the schedule of impact payments and other commitments by the developer;

- c. a list of the local government units which the developer believes might potentially be affected by the development;
 - d. a table of contents;
 - e. numbered pages throughout.
3. The plan must be bound in a manner that will allow for the ready removal and insertion of pages.
4. The impact plan must contain information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the impact plan.... *[ARM 8.104.203]*

The summary of the plan must contain the schedule of the developer's commitment to provide financial or other assistance. The schedule and summary must identify for each affected local government unit the proposed financial and other assistance, including the amount, purpose, method, and timing of each impact payment.

E. ASSISTANCE TO LOCAL GOVERNMENTS TO PREPARE FOR AND EVALUATE THE IMPACT PLAN *[90-6-307(3), MCA]*

Recognizing that local government units will incur additional costs and may need assistance to help them prepare for and evaluate an impact plan, the Legislature provided that:

Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any. *[90-6-307(3), MCA]*

In preparing for an impact plan, for example, local governments may initiate or intensify their efforts to prepare or update a comprehensive plan or growth policies for the impact area; adopt a growth management component to a plan; adopt or revise subdivision regulations; adopt a zoning or interim zoning district and regulations for the impact area; conduct facility studies; update a capital improvements program; or engage in other land-use, facility or service planning activities that will enable the local government to participate more effectively in the preparation, review and implementation of the impact plan.

The county, on behalf of all affected local government units, may engage a consultant with experience in growth management, fiscal impact analysis, and impact mitigation planning to help the local governing bodies and their planning staff through the process of preparing for, preparing, and reviewing the impact plan. In preparing and implementing their impact plan, both the developer and the community benefit if the local government unit has a high level of local planning and growth management capability.

If the developer prepays taxes to help local government units "prepare for and evaluate the impact plan," the plan needs to provide for later crediting the prepaid tax. This may mean simply clarifying that the credit for this tax prepayment will be calculated and provided in the same manner as other tax credits as authorized by *Section 90-6-309, MCA*, and the approved plan.

Appendix I-C discusses local governments' request for assistance in more detail.

F. SUMMARY

The work of both the developer and the affected local government units begins prior to the actual preparation of the plan and extends through its implementation. Each begins by familiarizing itself with the Impact and Tax Base Sharing Acts and with its own and the other party's responsibilities. Each then assembles and analyzes data and information necessary to the plan. Using this data and their knowledge of the mining project and the local area, the parties work together to arrive at the reasonable and mutually acceptable definitions; assumptions; projections; impact mitigation provisions; monitoring, adjustment and amendment provisions; and financial and other commitments which comprise the impact plan.

The format and substance of the impact plan are to allow for a ready review and analysis of the plan, its several parts, and how they relate to one another. The impact plan is to contain, at a minimum:

- **information specifically required by statute,**
- **information necessary to the implementation of statute, and**
- **information necessary to the review and implementation of the plan. [ARM 8.104.203]**

The impact plan may be submitted for formal review any time after the developer has applied for its operating permit from the DEQ. It is assumed that the impact plan preparation, review and approval process will run roughly concurrently with the permit application process. *[90-6-307(1), MCA]*

The DEQ may prepare an environmental impact statement (EIS) in conjunction with other State and, sometimes, federal agencies. If an EIS is prepared, the DEQ is to cooperate with local government units to help them eliminate duplication of effort in data collection. *[90-6-307(1), MCA]* Baseline studies (prepared by the developer for DEQ) and impact assessments (prepared by DEQ and other approving and cooperating agencies) may be useful to the developer and the affected local governments in the preparation and review of the impact plan.

The EIS identifies and evaluates a broad array of impacts that may result from the mineral development, including social and economic impacts. EIS's vary in the level of detail with which they address social and economic impact issues, including housing, transportation, and local government services and finances. The EIS provides information about the larger context in which the impact plan is expected to operate, which can be very useful to those who are preparing and reviewing the impact plan. The plan itself focuses in greater detail on service, facility and fiscal impacts to local government units, identifying service and facility needs, service delivery methods, increased costs, mine-related revenues, and specific commitments for meeting increased needs and costs.

In some circumstances, the advent of a new hard-rock mine may result in little or no increased cost for local government units. In others, the increase in service and facility needs and costs may be substantial. A variety of factors influence the complexity of an impact plan and the level of financial commitment required of the developer, including the timing, size and location of the mineral development; the skills and number of direct and derivative employees needed, in relation to the available local workforce; the anticipated extent of job shifting; the number and demographic characteristics of the in-migrants and the rate of in-migration; where in-migrants are likely to reside or to attend school; the

number of affected local government units and communities, their size in comparison to the anticipated in-migration, and their planning, administrative and growth management capabilities; the availability of housing, housing sites, and housing financing; the capacity and condition of existing services and facilities; policies and proposed actions by the developer regarding hiring, employee training, transportation and housing; the anticipated nature, severity and duration of impacts; the anticipated disparity and time-lag between increased costs and increased revenues; the lead-time required by local governments to prepare for needed services and facilities; the degree of certainty or risk attributed by the developer, the local government units, or the community to the assumptions and projections on which the plan is based; and the commitment of the developer, local government units and community to growth management policies and practices.

The elements of an impact plan discussed in this chapter include both statutory and regulatory requirements and other features of a plan that make it functional and contribute to its review or implementation. *ARM 8.104.203* provides a checklist of basic statutory and regulatory requirements. In 1982, at the request of mineral developers and local governments, the Board adopted an outline of the type of information typically needed for a complete, functional impact plan. The outline has been updated and is included as Appendix I-B.

The appendices contain additional information and references concerning impact plans. The Board recognizes that, in practice, each plan will be unique in both organization and content, reflecting the characteristics and concerns of the proposed mining project and the communities it affects. A copy of each approved plan is available for public review at the Board's office in Helena. Persons preparing or reviewing impact plans may wish to refer to these plans for further examples of form and content. They may also find it helpful to discuss with other mineral developers and affected local government personnel what has worked well for them and what has not.

While the components of the proposed plan are being prepared, and again when the draft is substantially complete, the developer and affected local government units may wish to review the proposed plan informally, allowing sufficient time for revisions, before the plan is submitted for formal review. Informal reviews provide the opportunity, without the constraints or expenses associated with the formal review process, for the developer and affected local government units to refine the details of the plan and to identify and resolve potential problems, including possible omissions, ambiguities, or internal conflicts or discrepancies.

Because the individuals who prepare an impact plan may not be the same persons who review the plan or who implement it over time, the plan needs to be a clearly written, complete, freestanding document, encompassing to the extent possible all of the definitions, assumptions, provisions and commitments concurred in or "understood" by the affected parties. When the plan is approved, it becomes, essentially, a contractual agreement between the developer and the affected local government units.

When the plan is ready for formal review, the developer officially submits it to the Board and to the affected local government units. Local government review of the plan includes public input at meetings of the governing bodies and at the required public hearing. If the developer and the local governing bodies disagree about any part of the proposed plan, their disputes are resolved either by negotiation among the parties or by adjudication by the Board. After disputes are resolved, the plan is approved.

After the plan is approved and required guarantees are provided, affected local government units and the developer may begin to implement the plan. This may entail establishing impact funds and amending budgets; making impact payments; preparing for and providing needed services and facilities; allocating taxable valuation; monitoring population in-migration, distribution and resulting impacts; adjusting or amending the plan; and calculating and providing tax credits.

If, within two years from the date commercial production begins, an amendment is needed because of "material inaccuracies" in the assessment of impacts, either the developer or an affected local government unit may file a petition to amend the impact plan. Otherwise, either party, individually, may petition to amend the plan only if employment levels increase or decrease by at least 75 persons, or if the plan itself specifies conditions that will allow the plan to be amended. The parties to a plan may jointly petition the Board to amend the plan at any time.

The willingness and ability of the affected local government units and the developer to work together will determine, to a large extent, the success of the impact planning and mitigation process. The successful mitigation of local government impacts contributes to a more stable workforce for the developer and a less disrupted, better integrated, and perhaps enhanced, community for both old and new residents and taxpayers.

Chapter III discusses the formal local government review of an impact plan and the guarantees required of the developer after the plan is approved. Chapter IV discusses the implementation and amendment of an approved impact plan. To ensure that the proposed

impact plan is legally and functionally complete, and can be implemented as intended, the developer and affected local governing bodies should familiarize themselves with Chapters III and IV *while the plan is being prepared* and well before it is submitted for formal review.

CHAPTER III

REVIEW AND APPROVAL OF AN IMPACT PLAN

Formal evaluation of the proposed impact plan occurs during a 90-day review period and is the responsibility of the governing body of each affected local government unit. *[90-6-307(1) and (6), MCA]* Other local government personnel and the public help with the review, communicating their concerns and suggestions to the governing body of the affected local government unit, either directly or through the public hearing held by the county for the benefit of everyone potentially affected by the impact plan. *[90-6-307(4), MCA]* Local government officials and personnel who will be responsible for implementing any portion of the approved plan should assist with the review of the proposed plan.

A. SUBMITTING THE PLAN FOR REVIEW

Number of Copies. Before submitting the impact plan for formal review, the developer must confer with the affected local government units to determine the number of copies they will need. Each affected local government unit requires sufficient copies for its officials and personnel to be able to review and implement the plan. Local governments also need copies for public review, usually through the local library, the county cooperative extension office, the planning office, or the schools. The Board requires 12 copies, including several for other agencies and one for public review in its office in Helena. *[ARM 8.104.204]*

Distribution of Copies. The developer is to submit the proposed plan simultaneously to the Board and to all affected local government units identified in the plan. The developer may submit all local government copies of the plan to the county for the county to distribute; may mail or hand-deliver the appropriate number of copies to each affected local government unit; or may join with the county to distribute the plan among the affected local government units.

Proof of Submission and Receipt. When an affected local government unit receives the proposed plan, it is to provide the developer with a signed receipt, noting the date and the number of copies received. The developer must promptly file with the Board this proof of its submission of the plan. *[ARM 8.104.204(2)]*

Calculating Time: 90 Days. Affected local government units have 90 days within which to review the submitted plan. *[90-6-307(6), MCA]* The 90-day review period begins the day

after the plan is received by all affected parties and extends to the 90th day, or if the 90th day is a Saturday, Sunday or holiday, to the next day which is neither a weekend nor holiday. [ARM 8.104.206] Upon receipt of all proofs of submission from the developer, the Board will send a letter to all parties to the plan, confirming the final date of the review period.

County's Notice of Receipt of Plan. The county governing body must promptly publish notice of its receipt of the proposed plan in a newspaper of general circulation in the county. [90-6-307(1), MCA] The notice should identify the dates of the review period and where copies of the plan are available for public review. The Board requests that the notice appear in a large, readable format. [ARM 8.104.205] The county must provide a copy of the published, dated notice to the Board.

B. THE REVIEW PROCESS

Review of the submitted impact plan is entirely a local responsibility. Persons who prepare or review the proposed plan are to evaluate whether the plan contains what is required or contemplated legally and what will be needed functionally, so that the plan will accomplish its purpose. Overall, reviewers must evaluate whether, when implemented, the plan will enable local governments to carry out the activities necessary to meet the service and facility needs resulting from the new mineral development in a timely manner and without shifting the increased costs, at present or over time, to the non-developer local taxpayers.

Ex Parte Communications. During the review period, parties to the plan may confer with the Board's staff on matters pertaining to the review process and to the plan's compliance with statutory and regulatory requirements, but may not confer on the substance or merits of the plan. [ARM 8.104.210(2)] No party to the proposed plan may discuss the plan with Board members outside the context of a public meeting until the plan has been approved. [ARM 8.104.210(1)]

Notice and Hearing. During the 90-day review period, the governing body of the county must provide notice and hold a hearing on the proposed plan. [90-6-307(4), MCA] Citizens may address their concerns about the proposed plan at the required public hearing or at public meetings of the appropriate governing bodies. The county is to provide the Board with a copy of the published, dated notice of the hearing.

Modifications and Objections. Only the governing body of the affected local government unit may represent the interests of the governmental unit and its constituents

by initiating or concurring in changes to the proposed plan during the review period. [90-6-307(3) and (6), MCA; ARM 8.104.207; ARM 8.104.213]

Changes to a proposed plan may be initiated during the review period by either of two procedures. Acting together, the developer and the governing body of the affected local government unit may submit to the Board, in writing, a signed modification of the proposed plan. [ARM 8.104.213] Or, the governing body of an affected local government unit may file with the Board, in writing, a signed, formal objection to the proposed plan. [ARM 8.104.207] These procedures are discussed in more detail below.

30-Day Extension by Request. During the 90-day review period, any affected local government unit may request one 30-day extension. If there is a reasonable basis for the request, the Board must grant the extension. [90-6-307(6), MCA] The extension applies only to the local government unit, or units, that request it. That is, only the local government units that requested the extension may negotiate modifications or file objections to the proposed plan during the additional 30 days. However, if any other local government unit considers itself affected by a change proposed during the extension, that local government unit should immediately notify the Board, the developer and the other affected local government unit or units. [ARM 8.104.208A]

Objections and Negotiations. If an objection is filed during the 90-day review period or its extension, the review period will be followed by a 30-day negotiation period during which the parties may attempt to negotiate a resolution to their dispute. [90-6-307(7), MCA] During the negotiation period, they may, jointly and in writing, request that the Board extend the negotiation period by whatever length of time they specify in their request. [90-6-307(7), MCA] The Board will approve the extension as requested.

Approval or Adjudication. If no objections are filed during the 90-day review period or its extension, or if all objections are resolved by negotiation between the developer and the affected local government units during the negotiation period or its extension, the plan is automatically approved. [90-6-307(6), MCA] If any issues remain unresolved at the end of the negotiation period, the Board must adjudicate the remaining disputes. [90-6-307(7), MCA] The adjudication process is discussed below.

C. REVIEWING THE PLAN

Persons evaluating a proposed plan should refer to the Impact and Tax Base Sharing Acts, the Board's rules, Chapters II and IV of the *Guide*, and related appendices for information concerning the purpose, format, content, and implementation of an impact

plan. In preparing, reviewing and implementing an impact plan, large-scale mineral developers and affected local government units must comply with the requirements of the Impact Act. *Both the mineral developer and the affected local government units are legally responsible for ensuring that the plan contains the necessary and required information.* [90-6-307(1), MCA; ARM 8.104.203]

Required Content of Plan.

The format and substance of the impact plan must allow for a ready review and analysis of the plan, its several parts, and how they relate to one another. The impact plan is to contain, at a minimum:

- **that information specifically required or contemplated by statute and rule,**
- **that information necessary to the implementation of statute, and**
- **that information necessary to the review and implementation of the plan.** [ARM 8.104.203]

As discussed in Chapter II, the impact plan is to identify all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. [90-6-307(1)(c) and (2), MCA] In the plan, the *developer must commit to pay all identified, increased capital and net operating costs* to affected local government units. [90-6-307(2), MCA] Impact payments may take the form of property tax prepayments, facility impact bonds, grants or contributions, or other acceptable financing mechanisms that *do not shift the increased costs to local taxpayers.* [90-6-307(2), 90-6-309, 90-6-310, MCA] The plan must specify whether the developer's impact payments are to be transmitted through the Board or made directly to the county treasurer. [90-6-307(10), MCA] In either case, payments will be deposited in the impact fund of the affected local government unit. [90-6-307(10), MCA] The plan must also identify any non-financial assistance the developer will provide. [90-6-307(1)(d), MCA] The plan must contain a schedule showing when the developer will make impact payments or provide other assistance. [90-6-307(2), MCA]

If the impact plan requires the developer to prepay property taxes to meet impact costs, the plan must also provide for tax crediting. [90-6-309(4) and (5), MCA] The plan should require a prepayment only when, during the productive life of the mine, the local government unit will be able to credit all or part of the prepaid taxes from the mineral

developer's potential property tax revenue for the affected fund without shifting the effect of the impact cost over time to the non-developer local taxpayer. [90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA; ARM 8.104.211]

If an approved impact plan identifies a jurisdictional revenue disparity, it will trigger tax base sharing among the affected category of local government units. [90-6-402, 90-6-403, 90-6-404, MCA] The impact plan should reflect the anticipated effects of tax base sharing, particularly with respect to projected revenues, net operating costs and tax credits. Tax base sharing may be carried out according to a statutory formula, or the plan may modify that formula to ensure a reasonable correspondence between the allocation of taxable valuation resulting from the mineral development and the occurrence of increased costs resulting from the development. [90-6-404, MCA]

The plan may also need to contain information contemplated by the statutes that allocate the State's metal mines license tax revenues. [15-37-117(1)(d), MCA; see Chapter VI of the *Guide*]

Functionally, the impact plan must enable local government units to provide services and facilities when and where they are needed as a result of a new large-scale mineral development, and must ensure that local residents and taxpayers will not have to pay the increased local government costs, at present or over time. [90-6-301, 90-6-307(1) and (2), MCA] Although circumstances affecting the provision of services, costs and revenues may change, an approved plan is binding and may be altered only under the amendment provisions of Section 90-6-311, MCA. [90-6-307(6), MCA] Subsection 90-6-311(1), MCA, however, allows the plan itself to specify additional conditions under which it may be amended. [90-6-311(1), MCA; ARM 8.104.217] The plan itself may also contemplate alternative courses of action by providing for specific adjustments under specified conditions. To ensure that the plan's provisions for amendment and adjustment can be implemented, the plan should also provide for its own monitoring.

In providing for its own amendment, an impact plan might consider the potential need to amend the criteria and methods by which capital, operating and net operating costs are calculated or verified; the amount, timing or form of impact payments; the criteria and methods by which tax credits are calculated and provided; the formula for tax base sharing; the non-financial assistance provided by the developer; or even the plan's provisions for its monitoring, adjustment and amendment.

Elements of the Review. Review of an impact plan may be approached in a variety of ways. Of necessity, each individual who reviews the proposed plan does so from his or her own perspective and knowledge. Overall, however, the review should reflect:

1. an understanding of the powers, structure, finances and policies of the affected local government units;
2. an understanding of how the new mineral development and the resulting growth in population, employment and tax base might affect local government services, facilities, and revenues and expenditures, including the potential need for additional administrative and management capability;
3. a knowledge of the capacity, condition, and financing of the affected local government services and facilities;
4. a knowledge and understanding of the statutory and regulatory requirements and options for an impact plan, including the requirements, limitations and potential significance of:
 - a. the plan's assumptions and definitions;
 - b. the criteria and methods by which the plan calculates:
 - (i) increased capital and operating costs,
 - (ii) increased revenues without tax base sharing,
 - (iii) the appropriate tax base sharing formula, if any, and increased revenues with tax base sharing;
 - (iv) net operating costs;
 - (v) the appropriate form of payment, including, if tax prepayment is being considered, the feasibility of providing tax credits from potential mineral development revenue for the affected funds without shifting the effect of the cost over time to the non-developer taxpayer; and
 - (vi) the timing of impact payments; and

5. an understanding of the functional features that allow a plan to be implemented in a manner consistent with its purpose and the purposes of the Impact and Tax Base Sharing Acts, including the plan's specific provisions for monitoring, adjustments, and amendments.

In reviewing their proposed plan, local government personnel and the affected public will evaluate:

1. the reasonableness of the plan's definitions, data, assumptions, and projections;
2. the adequacy and accuracy of its identification of service and facility needs and costs;
3. the adequacy and appropriateness of its provisions for meeting increased local government needs and costs in a timely manner;
4. the adequacy of its provisions for calculating and providing tax credits without shifting the burden of cost over time onto the non-developer taxpayer;
5. the reasonableness and equitableness of its provisions for tax base sharing;
6. the adequacy of its provisions for monitoring, implementing, adjusting and amending the plan; and
7. the legal and functional completeness of the plan, including its compliance with statutory and regulatory requirements and expectations.

In summary, those reviewing the plan consider:

1. how the mineral development might affect their community, the availability of housing, local transportation needs and patterns, and local government services, facilities, costs and revenues;
2. how the affected local government units might best ensure their ability to provide the additional governmental services and facilities when and where they are needed as a result of the mineral development;

3. when and how the mineral developer should meet increased costs to ensure adequate and timely payment and provision of services without shifting the burden of cost to the non-developer resident and taxpayer;
4. when and how the local government unit might provide credits for the developer's prepaid taxes without, in effect, shifting the impact cost over time to the non-developer local taxpayer; and
5. how to ensure that the plan will function smoothly while it is being implemented and that it will continue to meet the objectives of the Impact Act even if circumstances differ from what is projected in the plan.

Resources. Persons who are reviewing and evaluating an impact plan may also find it useful to look at other impact plans, to discuss their situation with local government personnel in other impact areas, to review relevant portions of the environmental impact statement for the proposed mine and other EIS's for similar projects, and to obtain assistance from experienced consultants. Use of these resources may help generate appropriate questions, identify possible concerns and options, and avoid potential problems in the substance and implementation of the plan.

Assistance. As noted, after the developer formally submits an impact plan to the affected local government units, review of the plan is entirely a local responsibility. [90-6-307(6), MCA; ARM 8.104.210] To help local governments to participate fully in the preparation and review of the impact plan, the Act provides that any affected local government unit may request financial or other assistance from the developer to help it "prepare for and evaluate the impact plan." [90-6-307(3), MCA] Affected local government units transmit their request for assistance through the county, which contracts with the developer on behalf of local government units within the county. Monetary assistance to prepare for and evaluate an impact plan constitutes a tax prepayment from the developer to the local government unit receiving the assistance. [90-6-307(3), 90-6-309, MCA] Typically, however, the county governing body obtains and coordinates the necessary assistance on behalf of all affected local government units within the county.

D. HOW TO CLARIFY OR CHANGE AN IMPACT PLAN AFTER IT HAS BEEN SUBMITTED FOR REVIEW: LETTERS OF CLARIFICATION, MODIFICATIONS, AND OBJECTIONS

1. Letters of Clarification.

During the review period or its extension, an affected local government unit or the Board's staff may ask the developer to clarify some aspect of the plan, if it appears in some regard to be ambiguous, incomplete, inconsistent or potentially misleading to any of the parties concerned. Clarification can be accomplished through a letter from the developer to the Board with copies to the affected local government units. If clarification is requested by an affected local governing body, the governing body may wish to co-sign the developer's letter of clarification, indicating whether it concurs in the developer's explanation or interpretation. A letter of clarification becomes an attachment to the impact plan.

The governing body should also notify the Board if it does not concur with the proffered clarification. It should also decide whether, because of the effect of the differing interpretations, it wishes to negotiate a modification or to file an objection to the proposed plan.

The clarity of the plan is critical to all concerned. Early attention to possible ambiguities, inconsistencies or omissions may not only forestall objections to the proposed plan but may also prevent conflicts or formal complaints of non-compliance during the implementation of the approved plan.

2. Modifications. [ARM 8.104.213]

Any Party May Initiate, All Must Concur. The mineral developer and the governing body of an affected local government unit may negotiate a mutually acceptable modification of the submitted plan. Either the mineral developer or the affected local governing body may initiate the modification. The governing bodies of all local government units potentially affected by a proposed modification must concur in the modification. If they do not concur, the issue may be addressed as an objection, but not as a modification.

The proposed modification must be submitted in writing to the Board and to all affected local government units identified in the plan. The official copy of the modification submitted to the Board must bear the signatures of the developer's authorized representative and of the governing body of each local government unit affected by the modification. [ARM 8.104.213]

Modification of Format Only. As an exception, if the modification involves only the format of the plan, the governing body of the county may act on behalf of all affected local government units in concurring in the modification. [ARM 8.104.213] However, the governing body of the county may not act on behalf of other local government units if the modification affects the substance of the plan.

Required Request for Extension. To protect the interests of all parties, a modification submitted less than 30 days before the end of the review period must carry with it a request from the signatory local governing body for an extension sufficient to allow all affected local government units identified in the plan 30 days to review the proposed modification. [90-6-307(6), MCA; ARM 8.104.213] Any local government unit that considers itself affected by a proposed modification to which it is not a signatory should notify the Board, the developer and the signatory local government units immediately.

Statutory and Regulatory Compliance. A modification must comply with all statutory and regulatory requirements concerning the format and content of an impact plan and the modification of a plan. [90-6-307, 90-6-309, 90-6-310, 90-6-311, MCA; ARM 8.104.203, 8.104.211, 8.104.213, and 8.104.215]

Board's Acceptance of Proposed Modification. A proposed modification will be incorporated into the plan only if all parties to the plan have an opportunity to review the proposed modification and if all affected parties concur in the modification. The Board may refuse to accept any modification that appears to affect any party that is not a signatory to the modification; any modification that is arrived at without regard for the open meeting, public information and public participation requirements of the State, the Impact Act, and the Board; or any modification that does not comply with the statutory or regulatory requirements of the Impact and Tax Base Sharing Acts. Any matter not accepted as a modification may be addressed by one or more local government units through the objection process.

Summary. A modification during the review period allows either the developer or an affected local government unit to initiate a minor change to the proposed plan, provided that both concur in the change. If any affected local government unit opposes a proposed modification or if the modification fails to comply with statutory and regulatory requirements, the Board may refuse to accept it. In that event, the local governing bodies that support the proposed modification may submit an objection to the plan, if they wish to do so, recommending the change contemplated by the proposed modification.

3. Objections [90-6-307(5), (6) and (7), MCA; ARM 8.104.207 through 8.104.209]

Governing Body Files Objection. During the review period, if an affected local government unit disagrees with something in the plan, or if the plan appears to omit something that should have been included, the governing body may file a formal objection with the Board. [90-6-307(6), MCA] *Only the governing body of the affected local government unit may file an objection.*

If Plan Fails to Identify an Affected Local Government Unit. A local government unit that was not identified as an "affected local government unit" in a plan submitted for review may file an objection to the plan during the review period, if the local government unit can clearly demonstrate that it is likely to experience increased costs as a result of the development. [90-6-307(5), MCA]

Objection: Mechanism for Resolution. An objection to some feature of the plan should not be regarded as an objection to the mining project itself. *An objection is the mechanism provided by law to ensure that issues of concern to affected local government units will be resolved, whether through negotiation with the developer or adjudication by the Board.* The filing of an objection should not disrupt the continuing efforts of the local government unit and the developer to resolve disputed issues by negotiation.

Filing an Objection. In filing an objection, the governing body must comply with all statutory and regulatory requirements. [90-6-307, MCA; ARM 8.104.203 and ARM 8.104.207 through 8.104.209] The basic format and content requirements for a formal objection to a proposed impact plan are as follows:

1. An objection to an impact plan submitted to the board must contain or show:
 - a. the name(s) of the developer(s), the project and the impact plan;
 - b. the date the objection is submitted;
 - c. the name of the local government unit(s) raising the objection;
 - d. the name, mailing address, email address, and telephone number of the contact person(s) for the objecting local government unit(s);
 - e. the name of the local government unit(s) affected by the objection;

- f. the specific elements of the plan being objected to, giving the page number(s);
- g. the substance of the objection;
- h. the reasons for the objection;
- i. supportive data, information or analysis, including references to related portions of the plan (giving page numbers), such as:
 - (i) analysis of employment and population
 - (ii) analysis of location, nature, extent and cost of impact;
 - (iii) proposed mitigation measure;
 - (iv) proposed timing and cost of mitigation measure;
 - (v) proposed method, amount, and source of financing of the mitigation measure;
- j. the objector's proposal for resolving the disputed issues; and
- k. a resolution dated and signed by the governing body of each objecting unit of local government confirming that the above statements appropriately reflect its views and concerns. [ARM 8.104.207]

Number of Copies. Fifteen copies of the objection are to be filed with the Board and one with each local government unit. [ARM 8.104.208] Within 10 days of receiving the objection, the Board is to provide a copy to the developer. [90-6-307(7), MCA]

Negotiations. If an objection is filed, negotiation on the disputed issues may continue for at least 30 days after the end of the formal 90-day review period. During this 30-day negotiation phase, the developer and the affected local government unit, acting jointly, may petition the Hard-Rock Mining Impact Board to extend the negotiation period for whatever length of time they specify in their petition. [90-6-307(7), MCA]

By the end of the 30-day negotiation period, or its extension, the developer and affected local government units must notify the Board in writing of the outcome of their negotiations, indicating which objections have been resolved and which remain in contention. The

developer must provide the Board with copies of any changes to the plan to which the parties have agreed. The official copy must bear the signature of the developer's designated representative, the chairman of the governing body of each local government unit affected by the change, and the chairman of the governing body of the county, verifying their concurrence in the change. [ARM 8.104.209]

4. Summary: Modifications and Objections.

Modifications, objections, or both, may be filed during the 90-day review period or its 30-day extension. Only the governing body that requested the extension may file an objection or concur in a modification during that period. A *modification* may be initiated by either the developer or the governing body of an affected local government unit and must be concurred in and signed by all affected parties. An *objection* may be filed only by the governing body of an affected local government unit. A formal "objection" differs from a "modification" in two important ways. A formal objection is the mechanism by which:

- a. the developer and the local government unit may continue their negotiations on the disputed issue beyond the end of the review period; and
- b. if, during the negotiation period, the developer and local government unit do not arrive at a mutually acceptable solution, the disputed issues will be adjudicated by the Board. [90-6-307(7) and (8), MCA]

A format outlining the information required in an objection, as noted above, is attached as Appendix VII.

E. ADJUDICATION [90-6-307(7) and (8), MCA]

Contested Case Hearing. At the end of the negotiation period, any remaining disputed issues come under the legal jurisdiction of the Board. [90-6-307(7) and (8), MCA] The Board will provide notice and hold a contested case hearing on the disputed issues. The hearing will be held in the most affected county. [90-6-307(7), MCA] The contested case hearing, whether formal or informal, will be conducted in accordance with the Montana Administrative Procedure Act. [90-6-307(7), MCA; ARM 8.104.202]

The hearing will address only the disputed issues, not the plan as a whole, except as it is relevant to those issues. At the hearing, neither the plan nor the objection will carry with it a presumption of correctness. [90-6-307(7), MCA] If, following the end of the negotiation period, the parties should arrive at agreement on a disputed issue; they may submit that agreement to the Board in the form of a stipulation, as part of the hearing process.

Pre-Hearing Conference and Memorandum. Before the hearing, the parties or their attorneys will meet with the Board's staff and attorney to clarify and narrow issues and to establish procedures and schedules for the exchange of briefs and evidence. They will clarify the procedures to be followed at the hearing and will stipulate to uncontested facts, matters of law, and evidence to be submitted at the hearing. The Board's attorney will prepare a pre-hearing memorandum, to be signed by all parties, outlining the procedures and stipulations applicable to the hearing.

Evidence and Testimony. At the hearing, each party to the dispute will have the opportunity to present testimony and evidence and to cross-question the opposing party. The Board will have the opportunity to raise questions and to request additional information pertinent to its decisions. If necessary, the Board may continue the hearing until a later date.

Amendment and Approval of Plan. Within 60 days after the hearing is closed, the Board will adopt its findings of fact and conclusions of law. Based on these determinations, the Board will issue an order, resolving the disputed issues. The findings, conclusion and order will be served on all parties. The Board will then amend the plan, if necessary, to reflect and carry out its order. After approving the plan, as submitted or as amended, the Board will notify all parties and will serve them with the amendments, if any. *[90-6-307(8), MCA]*

Appeal. The developer or an affected local government unit may appeal the decision of the Board to the district court in the judicial district in which the Board held the hearing. *[90-6-307(8), MCA]* The decision of the district court may be appealed to the Montana Supreme Court. Unless the court instructs otherwise, the fact that the plan has been approved, with or without amendment, is unaffected by the filing of an appeal, even though resolution of the appeal could change the substance of the plan.

Local Government Recovery of Costs. The preparation and prosecution of a formal objection may result in additional expenses to a local government unit. The Impact Act provides that if the Board or a court finds an objection to be valid and issues a remedial order, the developer must pay the "reasonable costs and attorneys fees" incurred by the local government in filing the administrative or judicial appeal. *[90-6-307(13), MCA]* Given the history and purpose of the Impact Act, the Board has concluded that "reasonable costs" include not just court costs, but also other relevant costs, such as the cost of consultants retained to help the local government unit prepare and present its case.

Appendix XVII outlines a model informal contested case hearing procedure.

F. AFTER THE PLAN IS APPROVED: WRITTEN AND FINANCIAL GUARANTEES AND ENFORCEMENT OF COMMITMENTS

1. Written Guarantees. [82-4-335(5), 90-6-307(9) and (11), MCA]

After the plan is approved, the developer must submit a written guarantee to the Board and to the DEQ, stating that the developer will comply with all commitments made in the approved plan. When the Board receives the written guarantee, it will notify the DEQ and, if applicable, will inform the DEQ that the impact plan approval process will be complete when the developer's financial guarantee has been executed as required.

2. Financial Guarantee. [90-6-309(3), MCA; ARM 8.104.214]

If the approved plan requires the developer to prepay property taxes, the developer must provide the Board with a financial guarantee to assure that tax prepayments will be made as required by the plan. The financial guarantee must be made through a *third-party financial institution*. The guarantee must meet the basic criteria contained in *ARM 8.104.214* and must be reviewed and approved by the Board. [90-6-309(3), MCA; ARM 8.104.214]

After approving the financial guarantee, the Board will notify the DEQ that the impact plan approval process is complete, provided that the developer executes the financial guarantee as required. The financial guarantee must be approved and fully executed before any activities under the mine's operating permit commence or prior to any expense being incurred by an affected local government unit in its implementation of the approved impact plan, *whichever occurs first*. [82-4-335 (5) and (6), 90-6-307(2), MCA; ARM 8.104.214(2)]

The Board will determine on a case-by-case basis what constitutes an appropriate mechanism for the third-party financial guarantee. Appendix IX provides two sample financial guarantees, a letter of credit and an escrow agreement. The plans they serve range from a plan in which all identified impact costs were expected to occur within a fifteen month period to a complex and substantially amended plan with a number of contingency provisions and an implementation period in excess of ten years.

As a quirk of legislative evolution, the Act requires a financial guarantee only for the developer's tax prepayment commitments. [90-6-309(3), MCA] However, to ensure a consistent effect, financial guarantees have also encompassed grants and contributions

when they constitute a significant part of the developer's financial obligation. Facility impact bonds require a separate guarantee as part of the bonding process, which is entered into between the governing body and the developer during the plan implementation phase. [90-6-310(2), MCA]

3. Enforcement of Commitments. [82-4-335(5) and (6), 90-6-307(14) and (15), MCA; ARM 8.104.211(3)]

The developer's compliance with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts are requirements of the statutes under which the DEQ issues the developer's operating permit. [82-4-335(5), MCA] If the developer fails to meet its commitments in the approved plan or written guarantee, or to comply with the requirements of the Impact Act or Tax Base Sharing Act, the Board is required to notify the DEQ, and the DEQ must then suspend the developer's operating permit until notified by the Board that the developer is again complying with all commitments and statutory requirements.

G. SUMMARY

Large-scale mineral developers and affected local government units must comply with the applicable impact plan preparation, review and implementation requirements and expectations of the Impact Act and the Property Tax Base Sharing Act. Both the developer and the local governing bodies are legally responsible for the content and implementation of the plan. Evaluation of the proposed impact plan during the formal 90-day review period is the responsibility of the affected governing body with the assistance of local government personnel and the affected public.

The impact plan is to identify all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. [90-6-307(1)(c) and (2), MCA] In the plan the developer must commit to pay all identified, increased capital and net operating costs to affected local government units. [90-6-307(2), MCA] If the plan calls for tax prepayments, including prepayments to prepare for or evaluate the plan, it must also provide for tax crediting. [90-6-307(3), 90-6-309(4) and (5), MCA] Tax crediting is limited to the productive life of the mine and must not have the effect of shifting the increased cost over time to the non-developer local taxpayer. [90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA]

If the plan will result in tax base sharing, it must either accept the statutory tax base sharing formula or set out a modification of that formula that will achieve a more reasonable and equitable allocation of taxable valuation. [90-6-404, MCA] The plan must reflect the anticipated fiscal effects of tax base sharing in its projections of revenue and net operating costs, in the financial commitments of the developer, and in its tax crediting provisions.

Functionally, the impact plan must enable local government units to provide services and facilities when and where they are needed as a result of a new large-scale mineral development, and must ensure that local taxpayers will not have to pay the increased local government costs at present or over time. [90-6-301, 90-6-307(1) and (2), MCA] The plan may be amended as authorized by statute, and it may provide for its own monitoring, adjustment and amendment under conditions specified in the plan itself. [90-6-311, MCA]

Any interested person may participate in the review of an impact plan and testify at the public hearing held by the county. [90-6-307(4), MCA] However, only the governing body has the authority to act on behalf of the local government unit during the review process. The governing body may request clarification of the plan, may request a 30-day extension to the review period, may initiate or concur in a plan modification, may file a formal objection, may concur in requesting a specified extension to the negotiation period, or may concur in the negotiated resolution of an objection. [90-6-307, MCA; ARM 8.104.208, 8.104.208A, 8.104.213]

If no objections are filed, or if all objections are resolved by negotiation, the plan is automatically approved at the end of the 90-day review period or its 30-day extension. [90-6-307(6), MCA] If objections are filed and cannot be resolved by negotiation, the Board holds a public hearing and adjudicates the dispute. [90-6-307(7), MCA] The Board makes its determination within 60 days after the hearing; adopts its findings, conclusions and order; amends the plan accordingly, if amendments are needed; approves the plan as amended or as submitted; and serves the amendments on all parties. [90-6-307(8), MCA]

After the plan is approved, the developer must submit to the Board and to the DEQ a written guarantee of compliance with its commitments in the approved plan. Compliance with an approved hard-rock mining impact plan is a requirement of the statutes under which the operating permit is issued by the Montana DEQ to any large-scale mineral developer that applies for an operating permit on or after May 18, 1981. [82-4-335(5) and (6), MCA] The developer must also submit to the Board a third-party financial guarantee to ensure that tax prepayments will be made as provided in the plan. [82-4-335(5), 90-6-307(9) and (11), 90-6-309(3), MCA]

Each impact plan will be unique, just as each mining project, each affected local government unit, and each set of circumstances is unique. Some large-scale mineral developments may have little or no impact on local government services and facilities, particularly if the project is located in an area with a sufficiently large, available, trained or trainable local workforce and with sufficient housing and service capacity to absorb a relatively small immigration. Other mineral developments may have a considerable impact, resulting in demands on local government services and facilities that substantially exceed their existing capacity. Consequently, some impact plans will be fairly brief and simple documents, while others, of necessity, will be lengthy and complex.

Circumstances affecting any mining project, local government unit, or impact plan may change after the plan is approved. The plan should be written in a way that will enable mineral developers and affected local government units to adapt its provisions, as needed, to reflect these changes

CHAPTER IV

IMPLEMENTATION OF AN APPROVED IMPACT PLAN

A. INTRODUCTION

Successful implementation of an approved impact plan requires the cooperative efforts of the affected local government units, the mineral developer and the Board. It entails a thorough understanding of the purposes and requirements of the impact plan itself and of the Impact and Tax Base Sharing Acts, the Board's administrative rules, and the laws, regulations and procedures which apply generally to local governments in the exercise of their duties. To ascertain whether their plan is working as intended, affected local government units and the developer will need to monitor what is actually happening as they implement the plan. After determining how actual events and circumstances compare with what was anticipated by the impact plan, they can evaluate what changes, if any, are needed in their impact plan.

The approved impact plan identifies the increased need for local government services and facilities and the increase in local government capital and operating costs, revenues, and net operating costs that are anticipated as a result of the mineral development. *[90-6-307(1) and (2), MCA]* In the plan the developer commits to pay all identified capital and net operating costs resulting from the development. *[90-6-307(2), MCA]* The developer may also commit to provide non-financial assistance to forestall or mitigate potential impacts or provide other benefits. *[90-6-307(1), MCA]* The purpose of the impact plan is:

1. to ensure that local government services and facilities will be available when and where needed as a result of the mineral development and
2. to ensure that the non-developer local taxpayer will not be burdened with the increased local government costs resulting from the development. *[90-6-301, 90-6-307, MCA]*

The plan specifies whether the developer's impact payments will take the form of prepaid property taxes, grants or contributions, or facility impact bonds. *[90-6-307(2), 90-6-309, 90-6-310, MCA]* If the plan requires the developer to prepay property taxes, it will also specify how the recipient local government units will calculate and provide tax credits, within certain constraints. *[90-6-309(4) and (5), MCA; ARM 8.104.203]* As discussed in more detail later and in Chapter II and Appendix XII, tax crediting entails an annual calculation of potential tax credits by each affected local government for each affected fund. *[90-6-309(4) and (5), MCA; ARM 8.104.215]*

The approved plan includes a schedule of the impact payments and other assistance to be provided by the developer. [90-6-307(2), MCA] The payment schedule is derived from the developer's proposed timetable for constructing the mine and associated facilities and bringing them into production and from the projected timetable of local government costs incurred in preparing for and providing the services and facilities needed as a result of the mineral development. [90-6-307(1) and (2), MCA] Changes in the timing of these events may necessitate changes in the impact plan.

The developer's commitments to provide assistance reflect *projected* local government needs, costs and revenues. These projections are based on data and assumptions which may prove to be inaccurate, despite everyone's best efforts, or which may be rendered invalid by changing circumstances. Recognizing this, the Impact Act allows an approved plan to be amended under circumstances described in the Act or under circumstances described in the plan itself. [90-6-307(6), 90-6-311, MCA]

Within constraints established by the Board to reflect the requirements and protections of the Impact Act, the plan may also provide for specific adjustments, as described in the plan and contingent upon circumstances identified in the plan. In addition, certain procedural changes may be effected by means of plan adjustments, with the concurrence of the Board.

Some of the commitments the developer has made in the plan may be contingent upon the occurrence of specific "triggering" events or circumstances identified in the plan. In order to provide the basis for making adjustments or amendments and to implement provisions dependent on triggering events, the plan may require that certain data, assumptions, and impacts will be monitored by the affected local government units or the mineral developer. The plan may establish a procedure for evaluating the monitoring results and for making recommendations based on those results. If an approved plan does not contain criteria and procedures for monitoring, the mineral developer and affected local government units may wish to enter into a written monitoring agreement as an amendment or adjustment to the plan.

If an approved impact plan identifies a "jurisdictional revenue disparity," as defined by the Property Tax Base Sharing Act, the Board will notify the DOR to initiate tax base sharing. Tax base sharing involves the increase in mineral development taxable valuation that occurs after the operating permit is issued. [90-6-403(1), MCA] By definition, mineral development taxable valuation includes the taxable valuation of the gross proceeds of the mine and the taxable valuation of the real and personal property at the mine and mill site. [90-6-302(4), 90-6-402(8), MCA]

Tax base sharing operates separately for each of three categories of local government units: counties and incorporated cities and towns, high school districts, and elementary

school districts. [90-6-404, MCA] The DOR will allocate the increase in taxable valuation of the mineral development among the local government units in each category in which a revenue disparity is expected. The allocation will be made either according to the formula provided in

the Tax Base Sharing Act or according to a modification of that formula contained in the approved plan itself, whichever is applicable. [90-6-404, MCA] If, over time, the disparity ceases to exist, the Board may terminate tax base sharing upon request of an affected local government unit or the developer. [90-6-403(3), MCA]

The requirements and expectations of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act, the statutes and regulations which generally apply to local government units in the exercise of their powers and duties, and the provisions of the plan itself will guide the overall implementation of the plan. Its implementation and amendment may also be influenced by factors such as:

1. the unique features, adequacy and accuracy of the approved plan, including its provisions for monitoring, adjustment and amendment;
2. the actual timetable of the development;
3. the actual number, demographic characteristics, and settlement patterns of the immigrating population;
4. the actual effect the mineral development has on services and facilities, capital and operating costs, and revenues;
5. circumstances affecting when increased services and facilities will be needed versus when they were anticipated by the plan;
6. changes in State or federal statutes, regulations, or procedures that affect the services or facilities provided by local government units or the revenues anticipated by the plan; and
7. the willingness and ability of the local government units and mineral developer to carry out their responsibilities, meet their commitments, and respond to changing circumstances in a cooperative, effective and timely manner. This last may be the most critical factor in ensuring that the plan achieves what the Act intends.

B. BEFORE THE PLAN IS IMPLEMENTED: WRITTEN AND FINANCIAL GUARANTEES [82-4-335(5), 90-6-307, 90-6-309, MCA; ARM 8.104.214]

After the plan is approved, but before it may be implemented, the developer must provide two guarantees. First, the developer must submit a *written guarantee* to both the Board and the DEQ [82-4-335(5), 90-6-307(9) and (11), MCA]. As a result of modification, negotiation or adjudication, the approved plan may differ from the plan the developer originally submitted for review. In the written guarantee, the developer reaffirms its commitment to fulfill its responsibilities under the approved plan and, in particular, to make impact payments within the time schedule specified in the plan. The DEQ may not release the mine's operating permit until the impact plan has been approved and both the Board and the DEQ have received the developer's written guarantee. [82-4-335(5), MCA] As a statutory condition of the operating permit, the developer must then comply with its commitments in the approved plan and with the requirements of the Impact and Tax Base Sharing Acts. [82-4-335, MCA]

In addition to the written guarantee, if the plan requires the developer to prepay property taxes, the developer must provide a *financial guarantee* to the Board to ensure that if the developer were to default on its commitment to prepay taxes as provided by the plan, the Board would be able to make the required payments in the developer's stead. [90-6-309(3), MCA] The financial guarantee must cover all tax prepayment commitments and may encompass grants and contributions. [90-6-309(3), MCA; ARM 8.104.214]

The developer enters into the financial guarantee through a third-party financial institution. [90-6-309(3), MCA; ARM 8.104.214] The Board evaluates and approves each proposed guarantee to ensure that it meets the basic criteria established by the Board in its administrative rules. [90-6-309(3), MCA; ARM 8.104.214] The approved guarantee must be in place before activities under the permit commence or before an affected local government unit needs to incur expenses in implementing the impact plan, whichever occurs first. [ARM 8.104.214] When the financial guarantee has been fully executed, the Board notifies the DEQ that the developer has met its pre-permit requirements under the Impact Act.

Appendices IX-A and IX-B provide examples of two types of financial guarantees, a letter of credit and an escrow agreement.

C. TIMING

Based on how long it will take local governments to have facilities and services in place when they are needed as a result of the development, the plan should identify the specific

events or circumstances that will constitute the starting date for the implementation of the plan.

Implementation of an impact plan encompasses activities such as

- impact budgeting and accounting
- requesting, making and receiving impact payments
- preparing for and providing needed services and facilities; monitoring, adjusting and amending the impact plan, as needed
- calculating and providing tax credits;
- and, perhaps, tax base sharing.

Depending on the plan and the circumstances, local government units may find preparing for and providing needed services to be relatively simple, or very complex and time-consuming. Preparing for and providing services may involve

- meetings or hearings of the planning board, zoning commission, or governing body
- issuing requests for proposals and letting bids
- working with architects, engineers, and bond counsel
- preparing job descriptions and instituting hiring and training processes
- working with landowners and attorneys on acquisition of easements or rights-of-way
- holding site or bond elections
- And negotiating with other governmental units, funding sources, regulatory agencies, private landowners, and the public.
- The governing body and the developer may also need to meet to ensure that the plan is being implemented as they intended and is achieving its purposes.

In the plan, timing usually depends on

- expectations of when particular events will occur or how long certain activities will take
- when impacts will begin
- when the operating permit will be issued
- when the developer will begin construction
- how long it will take local governments to prepare facilities and services in order to meet increased demands when they occur
- how long the construction phase will last
- when the mine will begin production
- when it will reach full production
- And how long it will remain in production.
- Events or circumstances may not occur as anticipated. For example, the mine might reach full production on schedule, but because of lower metals prices, its gross proceeds and, therefore, its taxable valuation might be less than had been

anticipated. Or, because of changes in other sectors of the local economy, the available local workforce may be larger or may possess more transferable skills than had been anticipated, which might mean less immigration or a slower rate of immigration than projected, and fewer impacts. If events or circumstances do not occur as anticipated by the plan, the plan may need to be amended or adjusted.

A long delay between when the plan is approved and when construction begins increases the likelihood that events or circumstances will not be exactly as anticipated by the plan. Such a delay usually indicates that the approved plan should be informally reviewed and discussed again by all affected parties before it is implemented, to be sure that its provisions are understood, remain applicable, and are concurred in by all parties to the plan. If they are not, the plan may need to be adjusted or amended.

D. THE IMPACT FUND: BUDGETING AND ACCOUNTING FOR IMPACT PAYMENTS [90-6-307(10) and 90-6-323, MCA; ARM 8.104.211]

Although property tax payments are normally allocated among all funds within the taxing jurisdiction, all impact payments, including property tax prepayments, are credited only to the impact fund and are expended only as specified in the impact plan. [90-6-307, MCA; ARM 8.104.211] Each local government unit that will be receiving impact payments pursuant to an approved impact plan must establish an impact fund in its budget. [90-6-307(10) and 90-6-323, MCA; ARM 8.104.211] The impact fund must be consistent both with the provisions of the approved plan and with the jurisdiction's budgeting and accounting system. For instance, the county's impact fund budget might contain a line item for maintenance of the county access road to the mine and another line item for additional communications equipment for the sheriff's department. The accounting numbers for these budgeted expenditures from the impact fund should be similar to accounting numbers for similar line items in the county's regular budget. Having a separate impact fund budget that corresponds, in accounting terms, to its regular budget enables the local government unit to identify both impact and non-impact revenues and expenditures by type of service and will facilitate the calculation and provision of tax credits by fund.

Local government units using the BARS system may wish to refer to Appendix X, which provides a sample impact fund budget prepared by Stillwater County in cooperation with the Local Government Services Bureau of the Department of Administration. If requested to do so, the Local Government Services Bureau, Administrative Financial Division, Montana Department of Administration, will provide assistance to local government units that are establishing procedures for budgeting and accounting for impact payments.

**Accounting and Management Systems Section
Local Government Services Bureau**

**Department of Administration
301 South Park Avenue
Helena, Montana 59601
(406) 841-2909**

The developer and affected local government units may begin to implement an impact plan after local governments have formally adopted their budgets for the fiscal year. Recognizing this, the Act provides that:

If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payment. [90-6-323, MCA]

Tax prepayment, tax crediting and tax base sharing are discussed in more detail in Chapter II, later in this chapter and in the appendices.

E. IMPACT PAYMENT PROCEDURE [90-6-307(10) and (12), MCA; ARM 8.104.211]

The original Impact Act required the developer to make all impact payments through the Board. In 1985 the Act was amended to allow the plan itself to specify whether the developer will make payments directly to the affected local government units or through the Board. [90-6-307(10), MCA] Although essentially the same documentation is required either way, payment through the Board requires an extra step. [90-6-307(10) and (12), MCA] However, it also provides additional assurance to both the developer and the affected local government unit that payments will be made and expended as provided by the impact plan. Payment through the Board appears to be most useful in forestalling problems when the plan is complex or when it requires payments over an extended period of time.

When payments are transmitted through the Board, the Board establishes a pass-through sub account for each plan. Local government units usually request payments from the mineral developer and, if applicable, from the Board in a single letter. This means that the Board begins the process of disbursing the payment immediately upon receiving it. By statute, if any interest accrues on money in a pass-through account, it must be credited to the State general fund, unless the plan provides otherwise. Generally, however, the in-and-out turn-around time for payments minimizes or negates any potential interest earnings.

Although the Act speaks of making payments directly to local government units, this is somewhat misleading, because property tax prepayments, like normal property tax

payments, are paid to the *county treasurer*, who serves as tax collector for all local government units within the county. The treasurer credits each tax prepayment to the impact fund of the appropriate local government unit to be used as specified in the plan. If the plan provides for direct payment, then grants or contributions may be paid either to the affected local government unit or to the county treasurer on its behalf. However, all payments must eventually be credited to the impact fund for the affected local government unit and, therefore, are usually sent directly to the county treasurer. *Within the impact fund, the treasurer must distinguish grants and contributions from tax prepayments, because of the tax crediting requirement.*

Some community services are considered quasi-governmental services, because they may be provided either by a local government unit or by a nonprofit organization, which may or may not receive financial assistance from a local government unit. Particularly in rural areas, quasi-governmental nonprofit service providers include volunteer fire departments, quick response units, volunteer emergency medical teams, and volunteer ambulance services. In the impact plan, a developer may commit, voluntarily, to provide financial or other assistance to a nonprofit entity that provides a quasi-governmental service. If no affected local government unit assists the nonprofit financially, the developer may make impact payments directly to the nonprofit organization. Because nonprofit entities have no taxing authority, they can receive only grants or contributions, not tax prepayments or facility impact bonds. However, if an affected local government unit does assist the nonprofit financially, the plan may require the developer to provide the needed assistance and, as provided in the plan, the impact payments may be transmitted through the affected local government unit. Payments made through a local government unit may take whatever form is appropriate (tax prepayment, grant, facility impact bond), as specified in the plan. Impact payments to a nonprofit service provider are voluntary, but the developer may commit to them in the plan. Impact payments to the local government unit that assists a nonprofit entity financially may be required by the plan, if the local government expects to incur increased costs to enable the nonprofit to provide additional services needed as a result of the mineral development. If an affected local government unit has entered into an agreement with another local government unit, a State or federal agency, or a private, for-profit entity to provide governmental services on its behalf, the developer must make impact payments only to the affected local governmental unit itself and not to the actual service provider. The payment must be credited only to the impact fund of the affected local government unit for which the service is provided.

The impact plan payment procedures and documentation requirements are outlined in more detail in Appendix XI. The procedure complies with the statutory documentation requirements and ensures that accurate records of impact payments are available to the affected local government units, the developer, and the Board. *[90-6-307(10) and (12), MCA; ARM 8.104.211 and 211B]* In some instances, at the request of the affected parties,

the Board may agree to modify the procedure to facilitate implementation of a plan, provided that it receives all documentation required by statute.

Adequate documentation of payments is important to the Board, the developer and the affected local government units. While implementing the plan, local government units must comply with all normal budgeting and accounting requirements, with the requirements of the Impact and Tax Base Sharing Acts, and with their commitments to provide the services and facilities for which they are receiving impact payments. They must maintain accurate records of all property taxes prepaid by the developer, because, subject to certain limitations, they are required, over time, to credit these prepayments against the developer's future property taxes. [90-6-309, MCA; ARM 8.104.215] The developer depends on adequate documentation to ensure the stability of the mineral development. The operating permit for the mine is conditioned on the developer's timely fulfillment of its obligations under the impact plan. [82-4-335(5), MCA] If the question arises, the Board is required to determine whether the developer is complying with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing statutes. If the developer is not meeting these commitments and requirements, the Board must notify the DEQ, which must suspend the developer's operating permit until the developer again meets its commitments and the statutory requirements. [82-4-335(5) and (6), MCA; 90-6-307(11) and (15), MCA; ARM 8.104.211(3)]

F. CONDITIONAL PAYMENTS

Plans may provide for conditional impact payments; that is, payments that will be made only under specified circumstances. The plan may identify the amount of each conditional payment or it may describe how the amount will be determined. Following are several examples of provisions for conditional impact payments:

1. The plan provides that the developer will reimburse a rural fire district for actual expenses incurred by the district in responding to a fire within or emanating from the permit boundaries or caused by a mining project vehicle.
2. The plan establishes a contingency account within the impact fund that may be expended through a plan adjustment for minor impact costs, not to exceed a specified amount, that were not identified in the plan. Contingency budget expenditures require amendment of the impact budget to identify the specific expenditures. (The plan may provide that contingency account expenditures may be made either at the discretion of the governing body with notice and documentation to the developer and the Board, or that contingency account expenditures require the written concurrence of the developer and notice and documentation to the Board.)

3. The plan provides that for the first year each net additional impact student is enrolled, beyond the number projected, the developer will contribute to the school district an amount equal to the State's per student school equalization program payment, or the district's actual increased costs, if they exceed the school equalization program payment.
4. Based on a series of potential enrollment figures, the plan provides that the developer will pay a specified amount to the school district within 90 days of being notified by the district that the school's total enrollment and impact student enrollment both exceed the first (or second, or third) set of enrollment numbers specified in the plan.
5. The plan provides that the developer will pay the actual costs incurred by a small rural school district for enrolling or transferring mineral development students in excess of the number of immigrating students projected by the plan, regardless of the number actually enrolled at any given time. (That is, the plan may project an enrollment of 12 mineral development students in Impact Year 2, and at any given time actual enrollment may not exceed 11 mineral development students. However, during the year, a total of 23 mineral development students may enroll in or transfer from the district.)

The use of a "triggering" system for conditional payments presupposes a procedure whereby the responsible entity will notify the other affected party or parties to the plan and the Board when the triggering event or circumstance occurs. Ideally, the developer and affected local government units will have specified in the plan not only what impact payments the triggering event will generate, but also:

- a. how and by whom the triggering event or circumstances will be determined or verified,
- b. who is responsible for providing what information to whom, and
- c. how and by whom decisions resulting from the triggering event are to be made.

If the approved plan does not outline the procedure and identify responsibility for notification of triggering events, the parties may wish to enter into a written monitoring agreement as an adjustment or amendment to the plan. To avoid confusion and delays, both the plan and persons implementing the plan should be as explicit as possible about who is responsible for what. (And both should be prepared to deal with the unexpected.)

The developer and affected local governing body should acknowledge each triggering event or circumstance in a letter, signed by both parties, to the Board. (In practice, the local government unit often sends the co-signed letter to the Board, along with a copy of its related request to the developer for the resulting impact payment.)

Conditional payments are subject to the same budgeting, accounting and payment procedures as other impact payments.

G. TAX CREDITING [90-6-309(4) and (5), MCA; ARM 8.104.215]

Section 90-6-309, MCA, adopted in 1981 and amended in 1985, provides for the prepayment and crediting of property taxes. Property taxes that the developer prepays under an impact plan must later be credited back, within the requirements and constraints of statute. Tax crediting depends on both the tax crediting provisions of the impact plan and the actual impact costs, mineral development revenues, and local government budget requirements for the services and funds in question. Each fiscal year following the start of production at the mineral development, the affected local governing body must determine how much, if any, tax credit it is to provide to the developer. The governing body should notify both the mineral developer and the Board when it has made this determination.

Several principles and criteria apply to tax crediting. Under the Impact Act, the increased capital and net operating costs attributable to the mining operation are the financial responsibility of the developer. [90-6-307(1) and (2), MCA] Therefore, tax credits should not have the effect of shifting these costs over time to the non-developer taxpayer. [ARM 8.104.215]

Local government units are required to finance specific services from specific funds, some through the county general fund and others through individual funds, such as the library fund, the weed district fund, and the county road and bridge funds. Each fund is subject to its own mill levy limit. The total county mill levy is a composite of the individual levies. Similarly, the total tax bill received by the taxpayer reflects the levies, annual fees and assessments of all local government taxing jurisdictions, in which the taxpayer's property is located, plus statewide school and university system levies.

Normally, property tax revenues are distributed among all budgeted funds in the taxing jurisdiction, in proportion to each fund's mill levy. However, taxes prepaid in compliance with an approved impact plan are credited only to the impact fund and are expended from the impact fund only for the purposes identified in the approved plan, as reflected in the adopted impact fund budget. [90-6-307(10) and (12), MCA; ARM 8.104.211 and 211B] For instance, a tax prepayment made for maintaining the county access road to the mine will be deposited into the county's impact fund and expended only for maintenance of that particular road. A tax prepayment to finance an additional law enforcement vehicle and

two deputies would be deposited into the county's impact fund and expended only for the law enforcement purposes specified in the plan. Both types of impact costs are paid from the impact fund. Ordinarily, however, county road maintenance and county law enforcement are financed from separate funds, the county road fund and the county general fund.

With regard to tax credits, the multiplicity of funds and mill levy limits raises the question of whether a tax prepaid to the county should be credited only from the specific fund that corresponds to the service for which the prepayment was made, such as the county road fund, or from the total tax revenue paid by the developer to the county, without regard to how the tax prepayment was used. The question is of particular significance with respect to county roads. Not only is the county road fund separate from the county general fund, but, in effect, the two funds represent different taxing jurisdictions. Property in an incorporated city or town is taxed for the county general fund, but is not taxed for the county road fund. Therefore, if a tax prepayment was made for the purpose of upgrading or maintaining a county road and the subsequent tax credit came from the county general fund, then the municipal taxpayer would be bearing part of the effect of the tax credit, contrary to the intent of the Impact Act and contrary to the statutory and accounting requirements that apply to counties and municipalities. Within a jurisdiction, a parallel might be found in the potential effect tax crediting could have on the recipients of services financed from different funds and to conflict with the statutory and accounting requirements applicable to those funds.

Prepaid property taxes should be credited only from the fund that corresponds to the service for which the prepayment was made. Within a given year, a tax credit may not be made from a fund for which a net operating cost is projected. Within a given year, a tax credit may not exceed the developer's tax obligation. *[90-6-309(5), MCA; ARM 8.104.215]* In practice, this means that within a given fiscal year a local government unit might provide credits from some funds but not from others.

Local government personnel and the developer may wish to discuss budgeting and accounting issues related to impact funds, tax prepayments, and tax crediting with the Local Government Services Bureau of the Department of Commerce. Given the requirements of the Impact Act and the advice of the Local Government Services Bureau, the Board suggests that in the impact plan the following criteria be applied to the provision of tax credits:

1. In any given fiscal year, a tax credit must not add to capital or net operating costs resulting from the mineral development. *[90-6-302, MCA]*
2. In any given fiscal year, tax crediting should not occur if it would cause the non-developer local taxpayer to bear the effect of current or prior year

capital, operating or net operating costs resulting from the development. [90-6-302, MCA; ARM 8.104.215]

3. A prepaid tax should be credited only from the fund which corresponds to the service for which the tax was prepaid.

Plans submitted prior to July 1, 1985, are subject to the tax crediting provisions of the 1981 Impact Act. In 1981 the Act defined the procedure by which, each fiscal year after the mine begins production, affected local government units must calculate the potential tax credit. The statutory formula uses the current budget, historic mill levies, increased taxable valuation from the mineral development and total valuation of the taxing jurisdiction to determine how much, if any, tax credit could be allowed without causing a reduction or increase in the historic average mill levies of the taxing jurisdiction. Under the 1981 Act, local governments provide tax credits by reducing the taxable valuation of the development. Under the 1981 Act, local governments' tax crediting obligation terminates after 10 years following the tax prepayment.

Effective July 1, 1985, the Impact Act requires the plan to specify how tax crediting will be accomplished. [90-6-309(5), MCA] Local government units follow the same principles and may use the same or a similar, process in calculating tax credits, but they may no longer provide the credits by reducing the taxable valuation of the mineral development. Instead, the 1985 amendment anticipates that, subject to certain limitations, the governing body will provide a *dollar for dollar credit* against the developer's tax bill. Under the 1985 amendment, the tax crediting obligation extends throughout the productive life of the mine.

Appendix XII contains both the original and the amended versions of the tax prepayment and tax crediting statute.

Tax base sharing also affects tax crediting.

H. TAX BASE SHARING [90-6-401 through 405, MCA]

In 1983 the Legislature enacted the Property Tax Base Sharing Act as companion legislation to the Hard-Rock Mining Impact Act. The Tax Base Sharing Act is found in *Title 90, Chapter 6, Part 4* of the Montana Code Annotated. The Act begins with the following declaration of necessity and purpose:

The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience

a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be equitably distributed among affected local government units. [90-6-401, MCA]

The Tax Base Sharing Act defines a "local government unit" as a county, municipality, or school district. *[90-6-402(5), MCA]* (Independent special districts are unaffected by tax base sharing. By contrast, for impact plan purposes the Impact Act includes specific special purpose districts in its definition of "local government unit.")

The Tax Base Sharing Act defines an "affected local government unit" as a local government unit that "will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located," as identified in an approved impact plan. *[90-6-402(1), MCA]*

If an approved impact plan projects that the property tax revenue resulting from the mineral development will be inequitably distributed among the affected local government units, this, by definition, constitutes a "jurisdictional revenue disparity." *[90-6-402(3), MCA]* When the plan identifies a jurisdictional revenue disparity, the increase in taxable valuation of the mineral development that occurs after the operating permit is issued must be allocated among the affected local government units. *[90-6-403; 90-6-404, MCA]* Mineral development taxable valuation is allocated separately within each of three categories: counties and incorporated cities or towns, high school districts, or elementary school districts. *[90-6-404, MCA]*

Typically, a jurisdictional revenue disparity exists when increased local government costs resulting from the mineral development occur in counties, municipalities or school districts in which the mine is not located. Because the mine is located outside their taxing jurisdictions, they cannot tax the mineral development to meet their increased costs. A jurisdictional revenue disparity might also exist when the mineral development overlaps two or more similar jurisdictions, such as two elementary school districts, and its taxable valuation in one district would be insufficient to meet increased costs, while its increased valuation in the other district would exceed what is needed to meet increased costs.

If a "jurisdictional revenue disparity" occurs only within one category of local government units, tax base sharing will be initiated only within that category. For instance, if a jurisdictional revenue disparity exists only among elementary school districts, tax base sharing will occur only among elementary districts, and not among high school districts, or

counties and municipalities. Tax base sharing does not apply to local government units in categories in which the plan does not identify a jurisdictional revenue disparity.

When an approved impact plan identifies a jurisdictional revenue disparity in one or more of the three categories of local government units, the Board must notify the Montana DOR, and the Department must allocate the post-permit increase in mineral development taxable valuation among all affected local government units in the affected category. [90-6-403, 90-6-404, MCA] The taxable valuation of the mineral development consists of all real and personal property of the mineral development (land, buildings, equipment) and the gross proceeds resulting from the ore body. [90-6-402(8), MCA]

Prior to 1991, the allocation of taxable valuation followed the employee and student-based formulae contained in the Tax Base Sharing Act. The formulae allocate taxable valuation based on the number and place of residence of mineral development employees (counties and towns) or their school-age children (school districts). In 1991 the Legislature amended the Tax Base Sharing Act to make it both more flexible and potentially more equitable. The amendments allow tax base sharing to follow the statutory formulae or to be carried out according to a modification of the formula provided by the plan itself:

If the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development. [90-6-404(5), MCA]

This additional provision also means that the tax crediting provisions of the impact plan are subject to amendment.

The 1991 amendments also reserve 20 percent of the taxable valuation of the gross proceeds to the jurisdiction in which the ore body is located.

On or before May 1 of each year, the mineral developer must conduct a survey of mineral development employees to determine where they and their school-age children reside. [90-6-405, MCA] The employee survey must include all persons, both local and immigrant, who are employed by the developer or its contractors in the construction or operation of the mine, mill and associated facilities. [90-6-402(6); 90-6-405, MCA] The developer must report the employee survey findings to the DOR, that is, to the county assessor in the affected county, with a copy to the Hard-Rock Mining Impact Board. [90-6-405, MCA] Before filing the survey, it is helpful if the developer asks the principals or superintendents of affected schools to review and verify student enrollment data. If the allocation of taxable valuation is based on the statutory formula, the allocation for the next fiscal year will be adjusted to reflect the findings of the survey. [90-6-404; 90-6-405, MCA] If the allocation

formula is provided by the impact plan, it may or may not be affected by the survey, which remains relevant, nonetheless, for monitoring purposes.

When tax base sharing is in effect, the county assessor deals with mineral development taxable valuation in four segments, each of which is potentially subject to taxation by a different set of taxing jurisdictions:

1. The taxable valuation which existed prior to the mineral developer's receipt of the operating permit remains with the taxing jurisdictions in which the mineral development is located. *[90-6-403(1), MCA]* Typically, these jurisdictions include at least one county, one high school district, and one elementary school district.
2. Twenty percent of the taxable valuation of the gross proceeds is reserved to the jurisdiction in which the ore body is located. *[90-6-404(1), MCA]*
3. The increase in mineral development taxable valuation which occurs after the operating permit is issued, except for the reserved 20 percent of gross proceeds, is subject to allocation among the affected local government units in each of the three tax base sharing categories. *[90-6-404, MCA]* As noted above, the existence of a jurisdictional revenue disparity is determined separately for each tax base sharing category (counties and incorporated cities and towns; high school districts; and elementary school districts.) Tax base sharing occurs only within the category in which a jurisdictional revenue disparity is identified. If no jurisdictional revenue disparity is found within a category, tax base sharing does not occur for that category and the increase in mineral development taxable valuation remains with the taxing jurisdiction, or jurisdictions, in which taxable property is located.

For each category within which a jurisdictional revenue disparity is found, the DOR (county assessor) must allocate the increase in mineral development valuation, except for the reserved 20 percent of gross proceeds, based on the number and place of residence of the mineral development employees or their school-age children or based on the alternative formulae provided by the impact plan itself. *[90-6-404, MCA]* An allocation according to the statutory formula will proceed as follows:

- a. Instead of being allocated entirely to the county in which the mineral development is located, the increase in mineral development taxable valuation, except the 20 percent of gross proceeds reserved to the county in which the ore body is located, will be apportioned among the affected counties and incorporated cities and towns in which mineral development employees reside.

The allocation is based on the number of mineral development employees, both local and immigrating, residing in each affected county and incorporated city or town, with the limitation that not more than 20 percent of the increase may go to all municipalities combined. (Although the 20 percent gross proceeds reservation is, by statute, excluded from further allocation, the 20 percent municipal limitation is part of the statutory allocation formula and may be superseded by an allocation formula established by the impact plan.)

- b. Instead of being allocated entirely to the high school district in which the mineral development is located, the increase in mineral development taxable valuation, except the 20 percent of gross proceeds reserved to the district in which the ore body is located, will be apportioned among all affected high school districts in which school-age children of the mineral development employees reside.

The allocation is based on the number of mineral development students residing in each affected high school district.

- c. Instead of being allocated entirely to the elementary school district in which the mineral development is located, the increase in mineral development taxable valuation, except the 20 percent of gross proceeds reserved to the district in which the ore body is located, will be apportioned among all affected elementary school districts in which school-age children of the mineral development employees reside.

The allocation is based on the number of mineral development students residing in each affected elementary school district.

Each recipient county, incorporated city or town, and elementary or high school district applies its own mill levy to its share of the taxable valuation of the mineral development, whether that share is retained (pre-permit), reserved (20 percent gross proceeds), or allocated by statutory or impact plan formula.

- 4. The county applies countywide mill levies for the school foundation program and for the university system to the total taxable valuation of the mineral development without regard to tax base sharing. [90-6-403, MCA] Also, as noted, independent special purpose districts in which the mine is located are not affected by tax base sharing; they continue to apply their mill levies against the total taxable valuation of the mineral development.

The Tax Base Sharing Act provides that if the initial allocation of increased taxable valuation occurs prior to the first employee survey, it is to be based on the plan's projections of where employees will reside and where their school age children will be enrolled in school. [90-6-404(5), MCA] Subsequent allocations among school districts are made to the school district in which the student resides, as indicated in the developer's annual employee survey, regardless of where the student actually attends school. However, because of the sequence and timing of assessments (January), employee surveys (May), and local government fiscal years (beginning July 1), it appears that, in point of fact, all statutory formula allocations will be based on where mine employees and students reside.

Tax base sharing allows the developer, through the impact plan, to use facility impact bonds, property taxes, and tax prepayments to meet increased capital, operating and net operating costs in local government units where the mine is not located, as well as in those jurisdictions where it is. Without tax base sharing, the developer would have to finance all increased costs in the non-mine jurisdictions only through grants or contributions. Tax prepayments have the advantage that the recipient local government unit is obligated, within certain constraints, to provide future tax credits to the developer. [90-6-309, MCA] A facility impact bond has the advantage of using bondholders money, rather than the developer's, for the initial capital costs of new facilities. [90-6-310, MCA]

Tax base sharing does not affect the increase in capital and operating costs identified by the plan. However, tax base sharing will probably affect mineral development property tax revenues in each jurisdiction, and thereby may also affect the jurisdiction's net operating costs for services financed from property tax revenues. In local government units in which the mine is located, net operating costs may be higher or continue for somewhat longer than they would have without tax base sharing, because these local government units will receive less than 100 percent of the increase in taxable valuation of the development from which to generate revenue to meet increased operating costs or provide tax credits. In local government units in which the mine is *not* located and which receive a portion of the increase in taxable valuation of the development through tax base sharing, net operating costs will be less over time, because some or all of the increase in operating costs will be paid by property tax revenues from the development.

Tax base sharing does not affect the total taxable valuation of the mineral development, but may affect the amount of tax the developer actually pays, because each jurisdiction applies its own mill levy to its allocated share of the development's taxable valuation, and local government units that receive a portion of the taxable valuation through tax base sharing may have higher or lower mill levies than the jurisdictions in which the mine is located.

Whenever the amount of mineral development taxable valuation differs from what the plan projects, actual revenues and net operating costs may also differ from the plan's projections. If neither the statutory formula nor the plan's formula allocates sufficient taxable valuation to a jurisdiction to meet its impact costs, the developer or the affected local government unit (through the county), or both, may petition the Board to amend the impact plan, subject to the amendment criteria contained in the Impact Act or in the plan itself. They may seek either to modify the tax base sharing formula or to provide adequate impact payments without changing the formula.

After tax base sharing is initiated, it remains in effect "until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the [hard-rock mining impact] board." [90-6-403(3), MCA] As a matter of policy, the Board will determine whether the disparity has ceased to exist only upon request of the mineral developer or an affected local government unit. When the Board determines that a jurisdictional revenue disparity no longer exists, it will notify the DOR to terminate tax base sharing for the affected category, or categories, of local government units.

The tax base sharing procedure is discussed in more detail in Appendix XIII.

I. FACILITY IMPACT BONDS [90-6-310, MCA]

If a large-scale mineral development will result in the need to construct, renovate, improve or acquire a facility that is owned, operated or maintained by an affected local government unit, the approved impact plan may provide that the increased capital costs will be met through facility impact bonds. [90-6-302, 90-6-307, and 90-6-310, MCA] Facility impact bonds do not constitute a financial liability or indebtedness of the local government unit as a whole and do not affect its debt limits. [90-6-310(2), MCA] Interest earned on facility impact bonds is not subject to state taxes. [90-6-310(3), MCA]

The owners of the large-scale mineral development and the governing body of the affected local government unit enter into a written agreement for the issuance of the bonds. [90-6-310(1) and (2), MCA] Revenue for bond payments comes from an annual special levy on the property of the mineral development sufficient to retire the principal and interest on the bonds. [90-6-310(2), MCA] The written agreement must provide for a payment guarantee which ensures that, in addition to taxes paid to local government units by taxpayers generally, the owners of the mineral development will pay the principal and interest of the facility impact bonds. [90-6-310(2), MCA]

The bond payment guarantee is a financial guarantee, not merely a written promise to pay. A written guarantee would be redundant: the developer has already provided both the Board and the DEQ with its written guarantee that it will meet its commitments in the

impact plan. The developer's bond payment guarantee is a financial guarantee which may be provided through a third-party financial institution, as is the financial guarantee required of the developer when the plan provides for tax prepayments. In both situations, the purpose of the guarantee is to ensure that the plan's impact payment commitments will be met, regardless of the continued willingness or ability of the developer to make the payments. The difference is that the bond payment guarantee is made by the developer to the local government unit to protect both the bondholders and the financial good name of the local government unit, whereas the tax prepayment guarantee is made by the developer to the Board to protect local government units, local taxpayers, and service recipients. *[90-6-309(3); 90-6-310(2), MCA]*

In order to issue facility impact bonds, the governing body of the local government unit must adopt a resolution that identifies:

- the facility for which the bonds are issued
- the amount of the bonds
- the rate of interest the bonds bear
- the date of the bonds and the maturity date or dates of the bonds
- the dates interest is payable on the bonds
- the redemption options, if any, with respect to the bonds
- And the manner of execution of the bonds. *[90-6-310(4), MCA]*

The bonds must be in registered form as to principal and interest, payable in installments and at times not exceeding 30 years from their date of issuance, and payable at a place or places and be evidenced in a manner the governing body determines is in the best interest of the local government unit. *[90-6-310(5), MCA]* In establishing the maturity date of the bonds, the affected local government units and the developer need to estimate, conservatively, the probable productive life of the mine. As intended, the bonds should be retired from the annual special levy on the taxable valuation of the operating mineral development.

Facility impact bonds may be sold at public or private sale and at a price above or below par, as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds. *[90-6-410(6), MCA]*

If two or more local government units adopt resolutions to issue impact bonds, they may enter into an inter-local agreement authorizing their bonds to be combined in a single offering, provided that the governing bodies determine that the pooling of the bonds is in the best interest of the local government units, will facilitate the sale of the bonds under

more advantageous terms, will lower the interest rate, or will lower the cost of issuance. [90-6-310(7), MCA] In addition to complying with the specific requirements of *Section 7-11-105, MCA*, the inter-local agreement must ensure that the bond titles will denote that impact bonds of different local government units have been pooled, referring to each local government unit executing the inter-local agreement. [90-6-310(8), MCA] The inter-local agreement must also provide for a single debt service fund, to be held by a qualified trust company, to which each local government unit is to pledge and pay the revenue from the annual special tax levied against the property of the mineral development. [90-6-310(8), MCA] The agreement must specify that the bonds are payable solely from and against the debt service funds under the inter-local agreement. [90-6-310(8), MCA]

In preparing to issue facility impact bonds, the local governing body and the mineral developer should work closely with a qualified bond counsel.

J. MONITORING THE IMPACT PLAN

Monitoring may be necessary both to implement specific provisions of the plan and to achieve the purposes for which the plan was prepared. For example, the developer and affected local government units need to monitor "if...then" provisions or specific conditions that might allow the plan to be adjusted or amended.

To ensure that the approved plan does what it is intended to do, affected local government units and the mineral developer should monitor critical features of the plan, including the assumptions, data or projections on which the plan is based, such as the timetable of the development, the number and place of residence of employees and their school-age children, the number and place of residence of other persons who are considered to have moved into the impact area as a result of the mineral development, and the actual impacts to local government services, facilities, costs and revenues. Comparing actual to projected taxable valuation is basic to a monitoring program. Taxable valuation and, in turn, revenues, net operating costs and tax credits may be affected by the timing, cost and level of production at the mine or by metals prices that differ from what the plan projects. If the place of residence of either local or immigrating mineral development employees or students differs from what the plan projects, operating costs and net operating costs may be affected, as may be the allocation of taxable valuation under the statutory place-of-residence formula for tax base sharing.

A number of circumstances may accentuate the importance of monitoring and flexibility, including any of the following:

- if there is a time-lag between approval and implementation of the plan
- if the plan projects major impacts and requires a significant commitment by the developer
- if the plan is to be implemented over a period of several years

- if any affected services or costs may be significantly affected by small variances in the projected number of inmigrants, their needs or the projected revenues
- Or if the assumptions and projections on which the plan is based involve considerable uncertainty.

More detailed or more frequent monitoring may be required for those features of the plan that are considered to be particularly important or particularly sensitive to change.

Persons experienced in the mitigation of impacts from natural resource development advise that monitoring should be kept as simple as is consistent with the information needed to document "if...then" conditions and to verify the adequacy of the plan or to document the need for its adjustment or amendment. They also find that existing reporting requirements, both for the developer and for local governments, are often sufficient to provide most of the needed data without a duplication of effort. They recommend that the developer and affected local government units identify in advance who will assemble, transfer, and evaluate the needed information, and how and by whom decisions will be made based on the results of the monitoring. If the impact plan does not set out the terms of a monitoring agreement between the mineral developer and the affected local government units, they may wish to enter into a monitoring agreement as either an adjustment or an amendment to the plan.

K. KEY EVENTS AND DATES

The Impact Act refers to several key events or dates of which the Board and all parties to the plan need to be informed. [90-6-309(4), 90-6-311(1), MCA; ARM 8.104.203(4)(e)] The developer is to notify the Board and the governing body of each affected local government unit within 30 days of the occurrence of each "key event" identified as its responsibility in the Impact Act, the Board's administrative rules, or the impact plan. [ARM 8.104.203(4)(f)] The events identified by statute affect the prepayment and crediting of taxes and the implementation and amendment of the plan. For instance, the county governing body may request tax prepayments, on behalf of all local government units, *after the operating permit is issued*, which requires their notification by the developer that the permit has been issued. [90-6-309(1), MCA] Similarly, local government units must begin the tax crediting process as part of its budgeting process *after the mine starts production*, which requires their notification by the developer that the mine has started production. [90-6-309(4), MCA]

The developer is to define *commencement of commercial production* in the plan and is to notify the Board and the affected local government units when commercial production begins. [ARM 8.104.203] The beginning of commercial production initiates a two-year time period within which either the developer or the county, unilaterally, may file a petition to amend an approved plan owing to material inaccuracies in the plan based on errors in impact assessment. [90-6-311(1), MCA]

The plan may identify additional key events or circumstances related to when implementation of the plan, or specific features of the plan, is to begin, or in conjunction with "if...then" provisions or other conditions for impact plan adjustments or amendments. A monitoring agreement should provide that the entity with knowledge of the event or circumstance will notify the Board and affected parties to the plan when that event or circumstance occurs.

L. AMENDMENT OR ADJUSTMENT OF AN APPROVED IMPACT PLAN

The requirements and procedures for amending an approved impact plan are found in section 90-6-311, MCA, and ARM 8.104.217. At any time, the governing body of an affected county and the mineral developer may join in a petition to amend the impact plan. Either the governing body of an affected county or the mineral developer may petition the Board to amend the plan under the following circumstances defined by statute:

1. if it is expected that employment at the mineral development will increase or decrease by at least 75 persons, as defined by 90-6-302(4), MCA, over or under the employment levels contemplated in the approved impact plan; or
2. if within two years of when commercial production begins, it becomes apparent that an approved impact plan is "materially inaccurate" because of errors in impact assessment. [90-6-311(1), MCA]

In addition, *the impact plan itself may provide for its own amendment by specifying additional conditions under which the plan may be amended upon petition by either party. [90-6-311(1), MCA]*

When the existence of specific conditions is a prerequisite to filing a unilateral petition to amend the plan, the petitioner must certify that these conditions exist. For example, the plan might provide for its own amendment if the taxable valuation of the mineral development is less than the amount projected in the impact plan by at least 15 percent; if the number of students enrolled in the elementary school exceeds the number projected in the impact plan by more than 20 or by more than 6 in any single grade; if the number of direct mine-related inmigrants exceeds the number projected by 60 persons or by 15 percent; if the number of persons employed at the mineral development exceeds the number projected by more than 35 persons; if implementation of a specific feature of the plan is delayed for more than two years past the date projected in the plan; or if the lowest responsible bid for facility construction exceeds the amount projected in the plan by more than 5 percent. The plan will need to be monitored sufficiently to document the relevant data or circumstances.

Under the Impact Act, the governing body of the county serves as formal petitioner on behalf of any affected local government unit within the county that wants to amend the plan. [90-6-311, MCA; ARM 8.104.217] This is in keeping with the "lead agency" role the Act assigns to the county, under which the county coordinates some aspects of local government review, implementation and amendment of the impact plan. The Board regards the filing of a petition for amendment as a procedural responsibility of the county which does not indicate that the county governing body either supports or opposes the proposed amendment. In fact, the county governing body could act both as petitioner on behalf of another local government unit and, subsequently, as objector on its own behalf, if it considered the proposed amendment to be contrary to the best interests of the county.

The procedure for amending an impact plan is the same, regardless of the petitioner, the conditions authorizing the petition to be filed, or whether the petition is filed jointly or unilaterally. [90-6-311, MCA; 8.104.217] The petition is filed with the Board and a copy provided to each affected local government unit that is a party to the plan. The petition must include:

1. an explanation of the need for an amendment;
2. a statement of the facts and circumstances underlying the need for an amendment; and
3. a description of the corrective measures proposed by the petitioner. [90-6-311, MCA]

Additional requirements for the content of a petition are contained in the Board's administrative rules. [ARM 8.104.217] For example, if the petition is filed on behalf of another local government unit, it must include a dated and signed copy of the resolution, or resolutions, through which the governing body of that governmental unit has requested the amendment and authorized the county to submit the petition on its behalf.

Appendix XIV provides the format to be used for the petition. Petitioners should refer to both the Appendix and the administrative rule, *ARM 8.104.217*.

Within 10 days after receiving the petition, the Board will publish notice of the proposed amendment in a newspaper of general circulation in the most affected county. [90-6-311(2), MCA] The proposed amendment is subject to a 60-day review period which begins the day after the notice is published. [90-6-311(3), MCA] During the review period any affected party to the plan may file an objection to the proposed amendment. If no objection is filed with the Board within the review period, the plan is automatically amended as proposed by the petition.

Appendix XV provides the format for filing an objection to a petition for amendment. The objection must specify why the impact plan should not be amended as proposed by the petitioner. [90-6-311(3), MCA]

If the mineral developer and affected local government units are unable to resolve an objection to the petition within 30 days after the review period ends, the Board will hold a contested case hearing on the objection. [90-6-311(4), MCA] The hearing will be held in the most affected county within 30 days after the failure of the parties to resolve the objection. Following the hearing, the Board will make its determinations on the disputed issues; will amend the plan, if necessary, to be consistent with its determinations; and will serve its findings and the amendment, if any, on all parties to the plan. [90-6-311(5), MCA] Any affected party may seek judicial review of the Board's decision.

If the Board or the court finds that a local government unit's objection is valid, and if the objection results in some remedial order, the Board or the court must award the local government unit its "reasonable costs and attorneys fees associated with any administrative or judicial appeals." The developer must pay these costs. [90-6-307(13), MCA] The Board interprets "reasonable costs" as encompassing the expenses incurred by the local government unit in obtaining the assistance of a consultant to help formulate or defend its proposed amendment or objection.

Impact Plan Adjustments. An amendment is usually necessary when parties to the plan want to change either a commitment by the developer to provide specific financial or other assistance or a commitment by a local government unit to use an impact payment for a specified service or level of service. However, under certain circumstances changes may be made through impact plan adjustments, rather than amendments. An adjustment is a signed agreement between the developer and the affected governing body to make a change that is limited in scope and, usually, is specifically contemplated in the plan itself, as discussed below. Sometimes, with the concurrence of the Board, procedural changes not contemplated by the plan may also be made through plan adjustments.

When the developer and affected local government units determine that circumstances exist that will, or may, result in a plan adjustment, they should notify the Board in writing of the change in circumstances and the proposed change in commitments, citing the relevant portions of the impact plan. The letter outlining and agreeing to the adjustment must be signed by all parties to the adjustment. If the county is not a party to the adjustment, a copy should be provided to the county governing body or its designated representative, such as the county planning director. Because of its lead agency responsibilities, the county needs to know of any proposed or approved changes to the plan. The Board will either acknowledge the adjustment or will notify the parties that the matter cannot be dealt with as an adjustment, but must be handled as an impact plan amendment. Like an amendment, an adjustment becomes part of the approved impact plan.

Plan adjustments may occur under several types of circumstances. The plan itself may provide that the developer's commitments will change in specific ways under specified circumstances and that the changes will be acknowledged through "plan adjustments." For instance, the plan may set out exactly what the developer's commitment will be under each of several "if...then" scenarios. The parties will need to verify which scenario actually exists and to notify the Board which commitment is in effect.

An adjustment might also be used when the plan provides a specific method for determining the amount of financial assistance to be provided by the developer. For example, the plan may include a provision specifying that in the first year a mine-related student is enrolled, if the student represents a net increase in the total number of students from the previous year, the developer will contribute to the school district an amount equal to what the district would have received from the State foundation program had the student been enrolled the previous year. The adjustment would require the district and the developer to document the total number of students enrolled, the number of mine-related students, the net increase in students, and the amount corresponding to the State foundation program payments. For a small district concerned about a high anticipated turnover rate, the plan might also provide for adjustments based on an identified per capita cost for enrolling mineral development students, whether or not they represent a net increase in student population. In that case, the adjustment would need only to verify which new enrollees were mineral development students.

In the instances outlined above, the adjustments would be used to make changes that are specifically set forth in the plan itself. By contrast, an amendment, rather than an adjustment, would be needed to implement "if...then" provisions or alternative scenarios that neither specify nor provide a method of calculating the developer's financial responsibilities and commitments. As suggested in the discussion of monitoring, a plan may also use "if...then" provisions to describe the circumstances under which either party would be entitled to seek an amendment that would supplement or replace the commitments in the plan.

The local government unit must provide the agreed-upon type and level of service for which it is receiving an impact payment, but, within reason, its method of providing the service may change without the necessity for a formal amendment. The developer and affected local government units should decide in advance whether such changes would require the local government unit only to notify the developer or whether the developer would need to formally acknowledge or approve the change through an impact plan adjustment. For example, a local government unit may find that a different piece of equipment or a different staffing arrangement would be a preferable way of providing the needed service. If the method of providing the service can be changed without reducing

the needed level of service and without exceeding the financial commitment of the developer, the plan may be changed by adjustment rather than by amendment.

A plan might also provide that the developer may agree, through a plan adjustment, to make higher impact payments for services already identified in the plan, for related services necessary to meet the already identified need, or for service needs that were projected to occur or to be paid for in a different fiscal year. In each case, the letter of adjustment must:

1. cite the provision of the plan that authorizes the adjustment,
2. identify and attest to the circumstances that allow or require the adjustment, and
3. specify the changes that are to be made to the impact plan.

Amendments versus Adjustments. In terms of local government budgeting and accounting procedures, a plan may not be adjusted in a way that will result in using an impact payment intended for services ordinarily financed from one fund to pay for services ordinarily financed from a different fund, unless the plan has specifically provided for this change. The transfer of money from one budget category within the impact fund to another implies a change in the use of the impact payment from one service to another, which would ordinarily require a plan amendment. From another perspective, unless the plan provides for it, an adjustment may not diminish an agreed-upon level of service, increase a payment obligation, or cause an eventual tax crediting obligation to be shifted from one service or fund to another. This does not limit local governments from entering into inter-local agreements for the provision of services identified in the plan. For example, if a town and county decide to enter into an inter-local agreement through which the county will provide law enforcement services to the town, the town would still receive the impact payment, which it would use to reimburse the county under the terms of the agreement. Provided that the level and cost of service remained the same for the town, the inter-local agreement would constitute an adjustment to the method of providing service, not an amendment to the impact plan.

In general, an adjustment may be used for minor changes of the sort that could normally occur within a local government fund without a budget amendment, provided that the impact payment continues to be used as provided by the plan for services needed as a result of mineral development impacts. In determining whether a change might be accomplished by means of adjustment, the Board will interpret the commitments made in the plan as follows, unless the plan specifies otherwise:

1. The developer's commitment is to make a certain amount and type of payment, according to the schedule specified in the impact plan. The payment is made in order to ensure that the recipient local government will provide the type and level of service identified when and where the service is needed.
2. The local government unit's commitment is to provide the specified service or level of service when and where it is needed as a result of the development.

As discussed previously, the plan may also provide for its own adjustment through certain types of written agreements, such as memorandums of understanding between rural fire districts or between a fire district and the developer, which will be reviewed and revised periodically. Similarly, the plan might outline the terms of a monitoring agreement, while allowing the details of the agreement to be modified periodically by the parties through an impact plan adjustment.

In the course of time, the developer or an affected local government unit may identify additional concerns that the plan fails to address. These may include potential, rather than actual, problems. If this should occur, one way of forestalling or reducing apprehension is to amend the plan so that either party will be able to petition for an amendment if the worrisome event, circumstances or problem should arise. An amendment that establishes conditions for future amendments can define the general scope of those amendments at the same time that it offers reassurance about matters it would be premature to try to address in any greater detail.

M. ENFORCEMENT

If the developer fails to make payments or to comply with other commitments specified in the approved impact plan, the affected local government unit is responsible for notifying the Board. If the Board determines that the developer is not complying with its commitments in the impact plan or with the requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ [90-6-307(11) and (15), MCA]. The DEQ is required to suspend the developer's operating permit until such time as the Hard-Rock Mining Impact Board notifies it that the developer is once again complying with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts. [82-4-335(5) and (6); 90-6-307(11) and (15), MCA; ARM 8.104.211(3)].

N. CONCLUSION

In addition to the enforcement provisions of the Impact and Metal Mines Reclamation Acts, the Impact Act offers assurance of payment to the affected local government units through the financial guarantee from the developer to the Board and the facility impact bond

guarantee from the developer to the affected local government unit. If these guarantees are appropriately articulated, executed and utilized, they provide substantial assurance that the financial commitments in the impact plan will be met to the extent necessary to meet the impacts of the development and the financial obligations of the affected local government units arising from the impact plan.

In implementing the plan, developers and local government units must comply not only with the specific provisions of the approved plan, but also with the purposes and requirements of the Impact and Tax Base Sharing Acts and with other laws and regulations which apply generally to local government units in the conduct of their business. While a plan is being implemented, something unexpected that will require the prompt, joint attention of the local governing body and the mineral developer is likely to occur. To ensure that, even in stressful circumstances, the plan achieves the goals for which it was prepared; the Board encourages the affected parties to continue communicating and working together cooperatively as they implement their plan.

Because each mining project, each set of local government units, and each impact situation differs, every impact plan raises new questions during its preparation, review, adjudication or implementation. Questions or concerns about the requirements and procedures for implementing an approved impact plan may be directed to the Board or its staff at any time.

CHAPTER V

IMPACT PLANS, WAIVERS, AND CONDITIONAL WAIVERS

Any hard-rock mineral developer that applies for an operating permit from the Montana DEQ on or after May 18, 1981, is potentially subject to the impact plan requirements of the Hard-Rock Mining Impact Act. [82-4-335; 82-4-339; and 90-6-307, MCA] If the proposed mineral development is "large-scale," at the time the developer applies for an operating permit, the developer must prepare an impact plan as a condition of the permit, as discussed in Chapter II. [82-4-335(5); 90-6-307(1), MCA] If the mineral development becomes "large-scale" after it has received its operating permit, the permittee must prepare an impact plan within six months of being notified of its large-scale status, unless it successfully petitions the Hard-Rock Mining Impact Board for a waiver from the impact plan requirement. [82-4-335(6); 90-6-307(14), MCA] In response to the permittee's petition, the Board may grant a waiver or a conditional waiver, or it may require an impact plan. [90-6-307(14), MCA]

The term "large-scale mineral development" encompasses all mine-related activities for which an operating permit is required, including the construction and operation of the mine and associated milling facility. [82-4-335(1) and (5); 90-6-302(4), MCA] A mineral development is considered "large-scale" if "the average number of persons on the payroll of the mineral developer and of contractors at the development exceeds or is projected to exceed 75 for any consecutive 6-month period." [90-6-302(4), MCA]

The DEQ determines whether a mine permittee will become, or has become, a "large-scale mineral development." [82-4-335(6) and 82-4-339, MCA] Each permittee must file periodic employee reports with the DEQ at intervals established by the Department. The permittee must identify the number of persons employed in the construction and operation of the mineral development during the preceding year and the number expected to be employed in the coming year. [82-4-339(1)(d), MCA] At a minimum, the permittee must include in its annual report the employment data required by statute, but the Department may require additional data or more frequent reporting.

If the employment level reaches, or is expected to reach, "large-scale" status, the DEQ must notify the permittee, the Hard-Rock Mining Impact Board, and the county in which the mine is located. [82-4-335(6), MCA]. Within six months of when the DEQ notifies the permittee of its "large-scale" status, the permittee must file with the DEQ either proof of having been granted a waiver by the Board or proof of having submitted the impact plan for formal review. [82-4-335(6), MCA]

Following notification from the DEQ, the Board and the governing body of the affected county identify the local government units that may be affected by the mining operation. To assist them with this, the developer may be asked to provide information about where current employees reside and where new employees are expected to reside.

If the developer petitions the Board for a waiver of the impact plan requirement, the Board will provide notice and opportunity for hearing to the permittee and all affected local government units. [90-6-307(14), MCA] The hearing will address whether an impact plan, waiver or conditional waiver is needed, and may encompass the potential terms of a conditional waiver. As a matter of policy, the Board will hold a hearing only if requested to do so. This means that the governing body of a potentially affected local government unit must notify the Board if it appears that an impact plan or a conditional waiver may be needed.

If a plan is required, the permittee must submit the proposed plan to the Board and to the affected local government units. [82-4-335(6); 90-6-307, MCA] As noted above, the permittee must submit either a proof of waiver or the impact plan within six months of when the DEQ notifies the permittee of its large-scale status. [82-4-335(6), MCA] This means that if the permittee intends to petition for a waiver, it should do so as soon as possible after being notified of its large-scale status, in order to leave itself sufficient time to prepare an impact plan, if a plan is required.

The Board will grant a waiver or conditional waiver following the opportunity for hearing if the Board considers it unlikely that the increase in employment or changes in the mining operation will result in adverse fiscal impacts to any potentially affected local government unit. [ARM 8.104.218] The Board will grant a waiver without a hearing if:

1. No potentially affected local government unit requests a hearing or requests that the Board deny the waiver, grant a conditional waiver, or require an impact plan; or
2. The permittee and the governing bodies of all potentially affected local government units notify the Board in writing that:
 - a. they do *not* anticipate a need to increase local government services and facilities as a result of the mineral development; or
 - b. they do *not* anticipate that the increased need for services and facilities resulting from the mineral development will result in increased costs for the non-developer taxpayer. [ARM 8.104.218]

Following the hearing, the Board will require a conditional waiver or an impact plan if it appears that, since becoming or expecting to become large-scale, the mineral development has resulted or will result in an increased need for local government services or facilities and increased capital or net operating costs to one or more affected local government units. [90-6-307(1) and (2), MCA] The Board may grant a conditional waiver only if the Board considers it an adequate alternative to an impact plan. The Board must require an impact plan if the need for tax base sharing is indicated. [90-6-403, MCA]

A conditional waiver might be acceptable instead of an impact plan if only a few, easily identifiable service and facility needs and costs are to be addressed. For example, a

conditional waiver might require that the permittee upgrade the county access road, and its bridges, to the mine and that it pay a specified amount annually to cover the county's net operating costs for maintaining the road and bridges.

A conditional waiver might also be used to ensure that the affected local government units and the developer will provide for any future demands on local government services that result from the mineral development, should circumstances change and the need arise. To do this, a conditional waiver might establish specific criteria for its own revocation that are more stringent than those provided by statute, or it might establish specific "if...then" requirements. For instance, if an affected school district is at or near capacity, the conditional waiver might provide that if the school experiences a net increase in mine-related student enrollment, the developer will make impact payments to the district in amounts calculated as specified in the waiver, or, if the student enrollment exceeds a specified number, the waiver will be revoked.

In requesting a waiver, the developer and local government units need to be sure that, as a result of the mineral development, there is no increase in costs or decrease in services to the non-developer local taxpayer or service recipient. In requesting a conditional waiver, the developer or affected local government unit needs to specify what must be done to ensure that all increased service and facility needs and costs resulting from the mineral development will be met without shifting the increased costs to the non-developer local taxpayer. *[90-6-301, 90-6-307(1) and (2), MCA]* The Board will consider this information in establishing the conditions, or terms, of the conditional waiver.

Revocation of a Waiver or Conditional Waiver. If the permittee or an affected local government unit finds cause for a waiver or conditional waiver to be revoked, it should notify the Board. The Board may revoke a waiver or conditional waiver only upon request of an affected local government unit and only under circumstances specified by statute or by the conditional waiver itself. *[90-6-307(14), MCA]* Under the statute, a waiver or conditional waiver may be revoked if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more. *[90-6-307(14), MCA]* Before revoking a waiver or conditional waiver, the Board must provide notice and opportunity for hearing to the permittee and all affected local government units. *[90-6-307(14), MCA]*

After determining whether to grant, deny or revoke a waiver or conditional waiver, the Board notifies the permittee, the affected local government units, and the DEQ, providing each with a copy of the waiver, conditional waiver or denial of waiver. *[90-6-307(14), MCA]*

In summary, as a statutory condition of its operating permit, a large-scale mineral developer must comply with the requirements of the Hard-rock Mining Impact and Property Tax Base Sharing Acts and with the related requirements of the Metal Mines Reclamation Act. *[82-4-335(5) and (6); 90-6-307(15), MCA]* A large-scale mine permittee must obtain and file proof of an impact plan waiver, must obtain a conditional waiver and comply with its terms, or must submit an impact plan and comply with its commitments in the plan. *[82-*

4-335(6); 90-6-307(14) and (15), MCA] If the large-scale permittee fails to file the required proof of waiver with the DEQ or if it fails to comply with the applicable statutory requirements, as outlined above, the Board must notify the DEQ and the DEQ must suspend the mineral developer's operating permit. *[82-4-335(6); 90-6-307(14) and (15), MCA; ARM 8.104.211(3)]* The permit remains suspended until the permittee files the required proof of a waiver or until the Hard-Rock Mining Impact Board notifies the DEQ that the permittee has submitted the impact plan or that it is complying with the requirements of the conditional waiver or of the approved impact plan. *[82-4-335(6); 90-6-307(15), MCA; ARM 8.104.211(3)]*

CHAPTER VI

METAL MINES LICENSE TAX ALLOCATION TO COUNTIES AND SCHOOL DISTRICTS

A. INTRODUCTION

From 1986 through 1988 the Legislature allocated 33 percent of the State's metal mines license tax revenue to the State's hard-rock mining impact trust account. After meeting its administrative and operating expenses, as required, the Hard-Rock Mining Impact Board allocated the balance, always by far the larger portion, among sub accounts established for the counties in which the taxpaying mines were located. Money that accrued in the sub accounts was to be used by the Board for grants and loans to local government units affected by the closure of a mine that paid metal mines license taxes or by a reduction of 50 percent or more in the mine's workforce. Local governments were authorized to use the grants or loans for economic development purposes, to stabilize mill levies and to retire local government debts.

In 1989, the Legislature initiated major changes in statutes related to the metal mines license tax. The Legislature redefined gross proceeds/gross value [15-23-801, MCA]; revised metal mines license tax rates [15-37-103, MCA]; exempted metal mines license taxpayers from the resource indemnity trust tax [15-38-113, MCA]; revised the disposition of metal mines license tax revenues [15-37-117, MCA]; transferred the authority and revenue for hard-rock trust reserve accounts to the affected counties [7-6-2225, 15-37-117, and 90-6-331, MCA]; and authorized the county and school district metal mines reserve accounts [7-6-2226 and 20-9-231, MCA]. As a result of the 1989 metal mines license tax legislation and a 1991 amendment to the Impact Act, the State now allocates 25 percent of its annual metal mines license tax revenue to the county in which the taxpaying mine is located and 1.5 percent to the Board for its administrative and operating expenses and mandated reserve. If the mine will result in fiscal or economic impacts in more than one county, the 25 percent allocation is distributed between the counties in proportion to increased local government costs and increased employment. [15-37-117(1)(d), MCA; see also 15-37-117(2), MCA]

In July 1990, the Board transferred to the counties' hard-rock trust reserve accounts all money that it had held for them in the State's hard-rock mining impact trust account. [90-6-331, MCA] At the end of each fiscal year, the Board continues to apportion any uncommitted balance from its annual administrative and operation revenue and transfer it to the counties in which the taxpaying mines are located. The amounts, if any, are very small.

The Board has no administrative or quasi-judicial responsibility for the DOR's allocation of metal mines license tax money neither to the counties nor for the allocation or use of metal

mines license tax monies within the counties. However, the Board has included this discussion of the statutes governing the new metal mines license tax allocation in the *Guide*, because the allocation is part of the State's overall effort to help local governments mitigate the adverse fiscal and economic impacts that may occur as a result of hard-rock mines. In addition, if a proposed mine may cause increased costs and increased employment in more than one county, the statute that allocates metal mines license taxes imposes an additional expectation on the impact plan required by the Impact Act. [15-37-117, MCA]

B. METAL MINES LICENSE TAX ALLOCATION AND THE IMPACT PLAN

If more than one county will experience either increased costs or increased employment as a result of the mineral development, the impact plan should identify these counties, even though an increase in employment alone might not otherwise qualify a county to be considered an "affected local government unit" for impact plan purposes. In addition, the plan should identify the relative proportion of fiscal and economic impact each county is expected to experience. [15-37-117(1)(d), MCA; ARM 8.104.203(4)(g)] This may be difficult, because it requires comparing projections which may not correspond with actual impacts, unless the plan is later amended, and it requires a comparison of "apples" and "oranges." From the language in *Section 15-37-117, MCA*, it appears that the Legislature intended fiscal impact to be understood as adverse impact (costs) and economic impact as beneficial impact (employment). Beneficial fiscal impacts (property taxes) were excluded. Nonetheless, the statute requires that the DOR allocate metal mines license tax revenue:

To the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan.
[15-37-117(1)(d), MCA]

The county's distribution of metal mines license tax revenue may also be affected by the impact plan, as it relates to tax base sharing. [15-37-117(2), MCA]

C. COUNTY AND SCHOOL DISTRICT RESERVE ACCOUNTS AND USES [15-37-117(1)(d), MCA; 7-6-2225 and 2226, MCA; 20-9-231, MCA]

The county governing body must reserve *at least* 40 percent of the metal mines license tax revenue it receives in its hard-rock mining impact trust reserve account. [15-37-117(1)(d), MCA] The principal and interest from the account may be used only after the mine closes or its workforce is reduced by 50 percent or more, based on the average number of

persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period. [7-6-2225, MCA]

When the mine closure or workforce reduction occurs, the county must allocate *at least* one-third of the principal and interest in the hard-rock trust reserve "proportionally" among the "affected" school districts within the county. [7-6-2225, MCA] The recipient school districts may spend their respective shares for any purpose provided by law. The balance of the trust reserve (two-thirds or less) the county may grant or loan to other local government units within the county "to assist with impacts caused by the changes in mining activity." [7-6-2225, MCA] And, the county itself may expend money from the non-school portion of the hard-rock trust reserve account to stabilize mill levies, retire local government debt, or for economic development purposes, such as retaining jobs or attracting new industry. [7-6-2225, MCA]

After the county governing body has reserved at least 40 percent of its annual metal mines license tax allocation from the State, the governing body must then distribute the balance as follows: one-third to the affected high school districts, one-third to the affected elementary school districts and one-third to the county. [15-37-117(1)(d), MCA] Each jurisdiction credits its share to its metal mines reserve account and may hold the principal and interest in the account for any period of time. [7-6-2226, MCA; 20-9-231, MCA] Money held in schools' metal mines reserve accounts cannot be considered as cash balance for purposes of reducing mill levies. [20-9-231, MCA] School districts may expend money from their metal mines reserve accounts for any purpose authorized by law. [20-9-231, MCA] A county, however, may expend money from its metal mines reserve account only for planning and economic development purposes, primarily to enable the county to strengthen and broaden the non-mining economic base of the impact area in order to reduce the adverse effect of the eventual mine closure. [7-6-2226, MCA; 15-37-117(1)(d), MCA]

Metal mines pay metal mines license taxes on that portion of their gross proceeds that exceeds \$250,000 a year. [15-37-103, MCA]. The 25 percent allocation is made to the counties, whether or not the taxpaying mine is subject to the Hard-Rock Mining Impact Act. Metal mines license tax revenue depends on factors such as production levels, metals prices, and excludable costs. Over time, the amounts accrued in hard-rock trust reserve and metal mines reserve accounts will also depend on interest rates and decisions made by future legislatures and county and school district governing bodies.

D. CONCLUSION

Originally, the State's purpose in allocating a portion of its metal mines license tax revenue was to help local government units to stabilize mill levies, retire local government debts, and stabilize and diversify impact area economies, following a hard rock mine's workforce

reduction or closure. The 1989 legislation requires that counties retain at least 40 percent of their metal mines license tax allocation for these purposes, but it also allows counties and school districts to decide for themselves how much, if any, of the balance to expend during the productive life of the mine. Counties, however, are limited to expenditures for planning and economic development purposes, primarily to enable them to strengthen and broaden the non-mining economic base of the impact area in order to reduce the adverse effect of the eventual mine closure.

The metal mines license tax allocation is complementary to, but does not overlap or replace, the purposes and functions of the Impact and Property Tax Base Sharing Acts:

1. The Impact Act addresses primarily the *initial* impacts of development by requiring that the developer prepare an impact plan in which it identifies and commits to pay all increased local government costs resulting from the construction and operation of the new mineral development.
2. The Tax Base Sharing Act helps those counties, municipalities and school districts that are expected to incur ongoing increased costs as a result of the mineral development. Tax base sharing distributes the increased taxable valuation of the mineral development among the jurisdictions with increased costs and those in which the development is located, ensuring the former a source of property tax revenue to help meet *ongoing* costs resulting from the mineral development.
3. The primary purpose of the metal mines license tax allocation to counties, and through counties to school districts and other local government units, is to assist them in preparing for and dealing with the fiscal and economic impacts of a *reduction in mine workforce or a mine closure*.

Through these three pieces of legislation, the Legislature has tried to help local government units address the "front-end," "ongoing" and "tail-end" fiscal and economic impacts of hard-rock mineral development.

A more detailed discussion of the metal mines license tax allocation and the hard-rock trust and metal mines reserve accounts appears in Appendix XVI.